

**AMERICAN BAR ASSOCIATION**  
**ADOPTED BY THE HOUSE OF DELEGATES**  
**FEBRUARY 8-9, 2010**

**RECOMMENDATION**

1           RESOLVED, That the American Bar Association adopts the black letter of the ABA  
2 *Criminal Justice Standards on the Treatment of Prisoners* dated February 2010, to supplant the  
3 *ABA Criminal Justice Standards on the Legal Status of Prisoners*.  
4

5           FURTHER RESOLVED, That Standards 7-10.2 and Standards 7-10.5 through 7-10.9 of  
6 the *ABA Criminal Justice Mental Health Standards* are supplanted by Standard 23-6.15 of the  
7 *ABA Criminal Justice Standards on the Treatment of Prisoners*.

**Proposed ABA Criminal Justice Standards on the Treatment of  
Prisoners for consideration by the ABA House of Delegates (February 2010)**

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*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
*Standard 23-1.0 Definitions*

## **Standard 23-1.0 Definitions**

### *Correctional agencies, facilities, staff, and prisoners*

(a) The term “chief executive officer of the facility” means the correctional official with command authority over a particular correctional facility. In a prison, the chief executive officer is the person usually termed the warden; in a jail, the chief executive officer might be a sheriff, or might have a title such as superintendent, jailer, or commander. The term includes the chief executive officer’s emergency designee, if, for example, the chief executive officer is away or ill and has turned over command authority for a period of time.

(b) The term “correctional administrator” means an individual with responsibility for system-wide operations and management.

(c) The term “correctional agency” means an agency that operates correctional facilities for a jurisdiction or jurisdictions and sets system-wide policies or procedures, along with that agency’s decision-makers.

(d) The term “correctional authorities” means all correctional staff, officials, and administrators.

(e) The term “correctional facility” means any place of adult criminal detention, including a prison, jail, or other facility operated by or on behalf of a correctional or law enforcement agency, without regard to whether such a facility is publicly or privately owned or operated. The term “correctional facility” does not include a facility that serves solely as an immigration detention facility, a juvenile detention facility, or a juvenile correctional facility.

(f) The term “correctional official” means an individual with responsibility for facility-wide operations and management.

(g) The term “correctional staff” or “staff” means employees who have direct contact with prisoners, including both security and non-security personnel, and employees of other governmental or private organizations who work within a correctional facility.

(h) The term “governmental authorities” encompasses persons in all branches and levels of government whose conduct affects correctional policy or conditions, including members of the legislature, prosecutors, judges, governors, etc.

(i) The term “jail” means a correctional facility holding primarily pretrial detainees and/or prisoners sentenced to a term of one year or less.

(j) The term “prison” means a correctional facility holding primarily prisoners sentenced to a term of at least one year.

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(k) The term “prisoner” means any person incarcerated in a correctional facility.

*Other defined terms*

(l) The term “counsel” means retained or prospectively retained attorneys, or others sponsored by an attorney such as paralegals, investigators, and law students.

(m) The term “effective notice” means notice in a language understood by the prisoner who receives the notice; if that prisoner is unable to read, effective notice requires correctional staff to read and explain the relevant information, using an interpreter if necessary.

(n) The term “health care” means the diagnosis and treatment of medical, dental, and mental health problems.

(o) The term “long-term segregated housing” means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days.

(p) The term “qualified health care professional” means physicians, physician assistants, nurses, nurse practitioners, dentists, qualified mental health professionals, and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and provide health care to patients.

(q) The term “qualified mental health professional” means psychiatrists, psychologists, psychiatric social workers, licensed professional counselors, psychiatric nurses, or others who by virtue of their education, credentials, and experience are permitted by law to evaluate and provide mental health care to patients.

(r) The term “segregated housing” means housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. “Segregated housing” includes restriction of a prisoner to the prisoner’s assigned living quarters.

(s) The term “serious mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. It includes the status of being actively suicidal; severe cognitive disorders that result in significant functional impairment; and severe personality disorders that result in significant functional impairment and are marked by frequent episodes of psychosis, depression, or self-injurious behavior.

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*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
*Standard 23-1.1 General principles governing imprisonment*

## **PART I: GENERAL PRINCIPLES**

### **Standard 23-1.1 General principles governing imprisonment**

(a) A correctional facility should be safe and orderly and should be run in a fair and lawful manner.

(b) Imprisonment should prepare prisoners to live law-abiding lives upon release. Correctional authorities should facilitate prisoners' reintegration into free society by implementing appropriate conditions of confinement and by sustained planning for such reintegration.

(c) A correctional facility should maintain order and should protect prisoners from harm from other prisoners and staff. Restrictions placed on prisoners should be necessary and proportionate to the legitimate objectives for which those restrictions are imposed.

(d) Correctional authorities should respect the human rights and dignity of prisoners. No prisoner should be subjected to cruel, inhuman, or degrading treatment or conditions.

(e) For a convicted prisoner, loss of liberty and separation from society should be the sole punishments imposed by imprisonment. For a prisoner not serving a sentence for a crime, the purpose of imprisonment should be to assure appearance of the prisoner at trial and to safeguard the public, not to punish.

(f) A correctional facility should be appropriately staffed.

(g) Correctional officials should implement internal processes for continually assessing and improving each correctional facility.

(h) A correctional facility should be monitored and regularly inspected by independent government entities.

(i) A lack of resources should not excuse treatment or conditions that violate prisoners' constitutional or statutory rights.

(j) Governmental authorities should provide sufficient resources to implement these Standards.

(k) If governmental authorities elect to furnish prisoners any services by contracting with private providers, those contracted services should comply with these Standards, and the correctional agency should monitor and ensure such compliance, and should be held accountable for doing so.

**Standard 23-1.2 Treatment of prisoners**

In order to effectuate these principles, correctional authorities should:

- (a) provide prisoners with:
  - (i) humane and healthful living conditions;
  - (ii) safety from harm, including protection from punitive or excessive force and protection from abuse by other prisoners and staff;
  - (iii) necessary health care;
  - (iv) freedom from staff harassment and invidious discrimination;
  - (v) freedom of religion and substantial freedom of expression;
  - (vi) conditions conducive to maintaining healthy relationships with their families;
  - (vii) opportunities to participate in constructive activity and rehabilitative programs; and
  - (viii) comprehensive reentry planning; and
  
- (b) implement effective policies and procedures for:
  - (i) investigation and resolution of complaints and problems;
  - (ii) fair and rational decision-making; and
  - (iii) internal and external oversight of correctional operations.

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*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
*Standard 23-2.1 Intake screening*

## **PART II: INTAKE AND CLASSIFICATION**

### **Standard 23-2.1 Intake screening**

- (a) Correctional authorities should screen each prisoner as soon as possible upon the prisoner's admission to a correctional facility to identify the prisoner's immediate potential security risks, including vulnerability to physical or sexual abuse, and should closely supervise prisoners until screening and follow-up measures are conducted.
- (b) Correctional authorities should screen each prisoner as soon as possible upon the prisoner's admission to a correctional facility to identify issues requiring immediate assessment or attention, such as illness, communicable diseases, mental health problems, drug or alcohol intoxication or withdrawal, ongoing medical treatment, risk of suicide, or special education eligibility. Medical and mental health screening should:
- (i) use a properly validated screening protocol, including, if appropriate, special protocols for female prisoners, prisoners who have mental disabilities, and prisoners who are under the age of eighteen or geriatric;
  - (ii) be performed either by a qualified health care professional or by specially trained correctional staff; and
  - (iii) include an initial assessment whether the prisoner has any condition that makes the use of chemical agents or electronic weaponry against that prisoner particularly risky, in order to facilitate compliance with Standard 23-5.8(d).
- (c) Correctional authorities should take appropriate responsive measures without delay when intake screening identifies a need for immediate comprehensive assessment or for new or continuing medication or other treatment, suicide prevention measures, or housing that takes account of a prisoner's special needs.

### **Standard 23-2.2 Classification system**

In order to implement appropriate classification, housing, and programming, correctional officials should:

- (a) implement an objective classification system that determines for each prisoner the proper level of security and control, assesses the prisoner's needs, and assists in making appropriate housing, work, cellmate, and program assignments;
- (b) initially and periodically validate an objective classification instrument to ensure consistent and appropriate custody and other decisions for each correctional facility's population, including prisoners' assignments to multiple occupancy cells or dormitories; and

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**Standard 23-2.3 Classification procedures**

(c) ensure that classification and housing decisions, including assignment to particular cells and cellmates, take account of a prisoner's gender, age, offense, criminal history, institutional behavior, escape history, vulnerability, mental health, and special needs, and whether the prisoner is a pretrial detainee.

**Standard 23-2.3 Classification procedures**

(a) Initial classification of a prisoner should take place within [48 hours] of the prisoner's detention in a jail and within [30 days] of the prisoner's confinement in a prison.

(b) Each classification decision should be in writing, and should set forth the considerations and factors that led to the decision; the written decision should be made available to the prisoner, and should be explained by an appropriate staff member if the prisoner is incapable of understanding it. Correctional authorities should be permitted to summarize or redact information provided to the prisoner if it was obtained under a promise of confidentiality or if its disclosure could harm the prisoner or others or would not serve the best treatment interests of the prisoner.

(c) If a classification decision has an impact on a prisoner's release date or ability to participate in facility programs, correctional authorities should provide the prisoner an opportunity to request reconsideration and at least one level of appeal.

(d) Correctional authorities should review the classification of a prisoner housed in a prison at least every [12 months], and the classification of a prisoner housed in a jail at least every [90 days].

**Standard 23-2.4 Special classification issues**

(a) Classification and housing assignments should not segregate or discriminate based on race unless the consideration of race is narrowly tailored to serve a compelling governmental interest.

(b) A prisoner should not be separated from the general population or denied programmatic opportunities based solely on the prisoner's offense or sentence, except that separate housing areas should be permissible for prisoners under sentence of death. If convicted capital offenders are separately housed based solely on their sentence, conditions should be comparable to those provided to the general population.

(c) Correctional authorities should assign to single occupancy cells prisoners not safely or appropriately housed in multiple occupancy cells, and correctional and governmental authorities should maintain sufficient numbers of such single cells for the needs of a facility's particular prisoner population.

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**Standard 23-2.5 Health care assessment**

(d) Correctional authorities should make individualized housing and custody decisions for prisoners who have undergone sex reassignment surgery or have had other surgical or hormonal treatment and present themselves and identify as having a gender different from their physical sex at birth. In deciding whether to assign such a prisoner to a facility for male or female prisoners and in making other housing and programming assignments, staff should consider on a case by case basis whether a placement would ensure the prisoner's health and safety, and whether the placement would present management or security problems. Placement and programming assignments for such a prisoner should be reassessed at least twice each year to review any threats to safety experienced by the prisoner. The prisoner's own views with respect to his or her own safety should be given serious consideration.

## **Standard 23-2.5 Health care assessment**

Each prisoner should receive a comprehensive medical and mental health assessment by qualified medical and mental health professionals no later than [14 days] after admission to a correctional facility, and a comprehensive medical assessment periodically thereafter, which should include mental health screening. The frequency of periodic medical assessments should accord with community health standards, taking account of the age and health status of each prisoner. No new comprehensive medical and mental health assessment need occur for a prisoner transferred or readmitted to a correction facility who has received comprehensive health assessment within the prior year unless it is medically necessary, or the prisoner's medical records are not available. Unless a dental emergency requires more immediate attention, a dental examination by a dentist or trained personnel directed by a dentist should be conducted within [90 days] of admission if the prisoner's confinement may exceed one year, and annually thereafter.

## **Standard 23-2.6 Rationales for segregated housing**

(a) Correctional authorities should not place prisoners in segregated housing except for reasons relating to: discipline, security, ongoing investigation of misconduct or crime, protection from harm, medical care, or mental health care. Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner. Segregation for health care needs should be in a location separate from disciplinary and long-term segregated housing. Policies relating to segregation for whatever reason should take account of the special developmental needs of prisoners under the age of eighteen.

(b) If necessary for an investigation or the reasonable needs of law enforcement or prosecuting authorities, correctional authorities should be permitted to confine a prisoner under investigation for possible criminal violations in segregated housing for a period no more than [30 days].

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**Standard 23-2.7 Rationales for long-term segregated housing**

**Standard 23-2.7 Rationales for long-term segregated housing**

- (a) Correctional authorities should use long-term segregated housing sparingly and should not place or retain prisoners in such housing except for reasons relating to:
- (i) discipline after a finding that the prisoner has committed a very severe disciplinary infraction, in which safety or security was seriously threatened;
  - (ii) a credible continuing and serious threat to the security of others or to the prisoner's own safety; or
  - (iii) prevention of airborne contagion.
- (b) Correctional authorities should not place a prisoner in long-term segregated housing based on the security risk the prisoner poses to others unless less restrictive alternatives are unsuitable in light of a continuing and serious threat to the security of the facility, staff, other prisoners, or the public as a result of the prisoner's:
- (i) history of serious violent behavior in correctional facilities;
  - (ii) acts such as escapes or attempted escapes from secure correctional settings;
  - (iii) acts or threats of violence likely to destabilize the institutional environment to such a degree that the order and security of the facility is threatened;
  - (iv) membership in a security threat group accompanied by a finding based on specific and reliable information that the prisoner either has engaged in dangerous or threatening behavior directed by the group or directs the dangerous or threatening behavior of others; or
  - (v) incitement or threats to incite group disturbances in a correctional facility.

**Standard 23-2.8 Segregated housing and mental health**

- (a) No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing.
- (b) No prisoner should be placed in segregated housing for more than [1 day] without a mental health screening, conducted in person by a qualified mental health professional, and a prompt comprehensive mental health assessment if clinically indicated. If the assessment indicates the presence of a serious mental illness, or a history of serious mental illness and decompensation in segregated settings, the prisoner should be placed in an environment where appropriate treatment can occur. Any prisoner in segregated housing who develops serious mental illness should be placed in an environment where appropriate treatment can occur.
- (c) The mental health of prisoners in long-term segregated housing should be monitored as follows:

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**Standard 23-2.9 Procedures for placement and retention in long-term segregated housing**

- (i) Daily, correctional staff should maintain a log documenting prisoners' behavior.
- (ii) Several times each week, a qualified mental health professional should observe each segregated housing unit, speaking to unit staff, reviewing the prisoner log, and observing and talking with prisoners who are receiving mental health treatment.
- (iii) Weekly, a qualified mental health professional should observe and seek to talk with each prisoner.
- (iv) Monthly, and more frequently if clinically indicated, a qualified mental health professional should see and treat each prisoner who is receiving mental health treatment. Absent an individualized finding that security would be compromised, such treatment should take place out of cell, in a setting in which security staff cannot overhear the conversation.
- (v) At least every [90 days], a qualified mental health professional should perform a comprehensive mental health assessment of each prisoner in segregated housing unless a qualified mental health professional deems such assessment unnecessary in light of observations made pursuant to subdivisions (ii)-(iv).

## **Standard 23-2.9 Procedures for placement and retention in long-term segregated housing**

(a) A prisoner should be placed or retained in long-term segregated housing only after an individualized determination, by a preponderance of the evidence, that the substantive prerequisites set out in Standards 23-2.7 and 23-5.5 for such placement are met. In addition, if long-term segregation is being considered either because the prisoner poses a credible continuing and serious threat to the security of others or to the prisoner's own safety, the prisoner should be afforded, at a minimum, the following procedural protections:

- (i) timely, written, and effective notice that such a placement is being considered, the facts upon which consideration is based, and the prisoner's rights under this Standard;
- (ii) decision-making by a specialized classification committee that includes a qualified mental health care professional;
- (iii) a hearing at which the prisoner may be heard in person and, absent an individualized determination of good cause, has a reasonable opportunity to present available witnesses and information;
- (iv) absent an individualized determination of good cause, opportunity for the prisoner to confront and cross-examine any witnesses or, if good cause to limit such confrontation is found, to propound questions to be relayed to the witnesses;
- (v) an interpreter, if necessary for the prisoner to understand or participate in the proceedings;

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*Standard 23-2.9 Procedures for placement and retention in long-term segregated housing*

- (vi) if the classification committee determines that a prisoner is unable to prepare and present evidence and arguments effectively on his or her own behalf, counsel or some other appropriate advocate for the prisoner;
- (vii) an independent determination by the classification committee of the reliability and credibility of confidential informants if material allowing such determination is available to the correctional agency;
- (viii) a written statement setting forth the evidence relied on and the reasons for placement; and
- (ix) prompt review of the classification committee's decision by correctional administrators.

(b) Within [30 days] of a prisoner's placement in long-term segregated housing based on a finding that the prisoner presents a continuing and serious threat to the security of others, correctional authorities should develop an individualized plan for the prisoner. The plan should include an assessment of the prisoner's needs, a strategy for correctional authorities to assist the prisoner in meeting those needs, and a statement of the expectations for the prisoner to progress toward fewer restrictions and lower levels of custody based on the prisoner's behavior. Correctional authorities should provide the plan or a summary of it to the prisoner, and explain it, so that the prisoner can understand such expectations.

(c) At intervals not to exceed [30 days], correctional authorities should conduct and document an evaluation of each prisoner's progress under the individualized plan required by subdivision (b) of this Standard. The evaluation should also consider the state of the prisoner's mental health; address the extent to which the individual's behavior, measured against the plan, justifies the need to maintain, increase, or decrease the level of controls and restrictions in place at the time of the evaluation; and recommend a full classification review as described in subdivision (d) of this Standard when appropriate.

(d) At intervals not to exceed [90 days], a full classification review involving a meeting of the prisoner and the specialized classification committee should occur to determine whether the prisoner's progress toward compliance with the individual plan required by subdivision (b) of this Standard or other circumstances warrant a reduction of restrictions, increased programming, or a return to a lower level of custody. If a prisoner has met the terms of the individual plan, there should be a presumption in favor of releasing the prisoner from segregated housing. A decision to retain a prisoner in segregated housing following consideration by the classification review committee should be reviewed by a correctional administrator, and approved, rejected, or modified as appropriate.

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*Standard 23-2.9 Procedures for placement and retention in long-term segregated housing*

(e) Consistent with such confidentiality as is required to prevent a significant risk of harm to other persons, a prisoner being evaluated for placement in long-term segregated housing for any reason should be permitted reasonable access to materials considered at both the initial and the periodic reviews, and should be allowed to meet with and submit written statements to persons reviewing the prisoner's classification.

(f) Correctional officials should implement a system to facilitate the return to lower levels of custody of prisoners housed in long-term segregated housing. Except in compelling circumstances, a prisoner serving a sentence who would otherwise be released directly to the community from long-term segregated housing should be placed in a less restrictive setting for the final months of confinement.

**PART III: CONDITIONS OF CONFINEMENT**

**Standard 23-3.1 Physical plant and environmental conditions**

- (a) The physical plant of a correctional facility should:
- (i) be adequate to protect and promote the health and safety of prisoners and staff;
  - (ii) be clean and well-maintained;
  - (iii) include appropriate housing, laundry, health care, food service, visitation, recreation, education, and program space;
  - (iv) have appropriate heating and ventilation systems;
  - (v) not deprive prisoners or staff of natural light, of light sufficient to permit reading throughout prisoners' housing areas, or of reasonable darkness during the sleeping hours;
  - (vi) be free from tobacco smoke and excessive noise;
  - (vii) allow unrestricted access for prisoners to potable drinking water and to adequate, clean, reasonably private, and functioning toilets and washbasins; and
  - (viii) comply with health, safety, and building codes, subject to regular inspection.

(b) Governmental authorities in all branches in a jurisdiction should take necessary steps to avoid crowding that exceeds a correctional facility's rated capacity or adversely affects the facility's delivery of core services at an adequate level, maintenance of its physical plant, or protection of prisoners from harm, including the spread of disease.

**Standard 23-3.2 Conditions for special types of prisoners**

(a) Correctional agencies and facilities should provide housing options with conditions of confinement appropriate to meet the protection, programming, and treatment needs of special types of prisoners, including female prisoners, prisoners who have physical or mental disabilities or communicable diseases, and prisoners who are under the age of eighteen or geriatric.

(b) No prisoner under the age of eighteen should be housed in an adult correctional facility. Where applicable law does not provide for all such prisoners to be transferred to the care and control of a juvenile justice agency, a correctional agency should provide specialized facilities and programs to meet the education, special education, and other needs of this population.

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**Standard 23-3.3 Housing areas**

(c) A correctional agency should be permitted to confine female prisoners in the same facility as male prisoners but should house female and male prisoners separately. Living conditions for a correctional agency's female prisoners should be essentially equal to those of the agency's male prisoners, as should security and programming. A facility that confines female prisoners should have on duty at all times adequate numbers of female staff to comply with Standard 23-7.10.

(d) Correctional authorities should house and manage prisoners with physical disabilities, including temporary disabilities, in a manner that provides for their safety and security. If necessary, housing should be designed for use by prisoners with disabilities; such housing should be in the most integrated setting appropriate for such prisoners. Correctional authorities should safely accommodate prisoners who are particularly vulnerable to heat-related illness or infectious disease, or are otherwise medically vulnerable.

## **Standard 23-3.3 Housing areas**

(a) Correctional authorities should provide prisoners living quarters of adequate size. Single-occupancy cells should be the preferred form of prisoner housing. Facilities that must use dormitories or other multiple-prisoner living quarters should provide sufficient staffing, supervision, and personal space to ensure safety for prisoners and security for their belongings. All prisoner living quarters and personal hygiene areas should be designed to facilitate adequate and appropriate supervision of prisoners and to allow prisoners privacy consistent with their security classification.

(b) Correctional authorities should provide each prisoner, at a minimum, with a bed and mattress off the floor, a writing area and seating, an individual secure storage compartment sufficient in size to hold personal belongings and legal papers, a source of natural light, and light sufficient to permit reading.

(c) Correctional authorities should provide sufficient access to showers at an appropriate temperature to enable each prisoner to shower as frequently as necessary to maintain general hygiene.

## **Standard 23-3.4 Healthful food**

(a) Correctional authorities should provide each prisoner an adequate amount of nutritious, healthful, and palatable food, including at least one hot meal daily. Food should be prepared, maintained, and served at the appropriate temperatures and under sanitary conditions.

(b) Correctional authorities should make appropriate accommodations for prisoners with special dietary needs for reasons of health or age.

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**Standard 23-3.5 Provision of necessities**

(c) Correctional authorities should not withhold food or water from any prisoner. The standard menu should not be varied for any prisoner without the prisoner's consent, except that alternative food should be permitted for a limited period for a prisoner in segregated housing who has used food or food service equipment in a manner that is hazardous to the prisoner or others, provided that the food supplied is healthful, palatable, and meets basic nutritional requirements.

**Standard 23-3.5 Provision of necessities**

(a) Correctional authorities should maintain living quarters and associated common areas in a sanitary condition. Correctional authorities should be permitted to require prisoners able to perform cleaning tasks to do so, with necessary materials and equipment provided to them regularly and without charge.

(b) Correctional authorities should provide prisoners with clean, appropriately sized clothing suited to the season and facility temperature and to the prisoner's work assignment and gender, in quantities sufficient to allow for a daily change of clothing. Prisoners should receive opportunities to mend and machine launder their clothing if the facility does not provide these services. Correctional authorities should implement procedures to permit prisoners to wear street clothes when they appear in court before a jury.

(c) Correctional authorities should provide prisoners, without charge, basic individual hygiene items appropriate for their gender, as well as towels and bedding, which should be exchanged or laundered at least weekly. Prisoners should also be permitted to purchase hygiene supplies in a commissary.

**Standard 23-3.6 Recreation and out-of-cell time**

(a) To the extent practicable and consistent with prisoner and staff safety, correctional authorities should minimize the periods during the day in which prisoners are required to remain in their cells.

(b) Correctional authorities should provide all prisoners daily opportunities for significant out-of-cell time and for recreation at appropriate hours that allows them to maintain physical health and, for prisoners not in segregated housing, to socialize with other prisoners. Each prisoner, including those in segregated housing, should be offered the opportunity for at least one hour per day of exercise, in the open air if the weather permits.

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**Standard 23-3.7 Restrictions relating to programming and privileges**

(c) Correctional authorities should whenever practicable allow each prisoner not in segregated housing to eat in a congregate setting, whether that is a specialized room or a housing area dayroom, absent an individualized decision that a congregate setting is inappropriate for a particular prisoner. Prisoners should be allowed an adequate time to eat each meal.

## **Standard 23-3.7 Restrictions relating to programming and privileges**

(a) In no case should restrictions relating to a prisoner's programming or other privileges, whether imposed as a disciplinary sanction or otherwise, detrimentally alter a prisoner's:

- (i) exposure to sufficient light to permit reading in the prisoner's housing area, and reasonable darkness during the sleeping hours;
- (ii) adequate ventilation;
- (iii) living area temperature;
- (iv) exposure to either unusual amounts of noise or to auditory isolation;
- (v) opportunity to sleep;
- (vi) access to medication or medical devices or other health care;
- (vii) nutrition, except as permitted by Standard 23-3.4(c);
- (viii) access to water; and
- (ix) counsel or clergy visits, or written communication with family members, except as provided in subdivision (d) of this Standard.

(b) A prisoner should not be administered sedating or otherwise psychoactive drugs for purposes of discipline or convenience, or because of any decision relating to programming or privileges; such drugs should be used only to treat health conditions.

(c) Restrictions relating to a prisoner's programming or other privileges, whether as a disciplinary sanction or otherwise, should be permitted to reduce, but not to eliminate, a prisoner's:

- (i) access to items of personal care and hygiene;
- (ii) opportunities to take regular showers;
- (iii) personal visitation privileges, but suspension of such visits should be for no more than [30 days];
- (iv) opportunities for physical exercise;
- (v) opportunities to speak with other persons;
- (vi) religious observance in accordance with Standard 23-7.3; and
- (vii) access to varied reading material.

(d) Correctional authorities should be permitted to reasonably restrict, but not eliminate, counsel visits, clergy visits, and written communication if a prisoner has engaged in misconduct directly related to such visits or communications.

**Standard 23-3.8 Segregated housing**

(a) Correctional authorities should be permitted to physically separate prisoners in segregated housing from other prisoners but should not deprive them of those items or services necessary for the maintenance of psychological and physical wellbeing.

(b) Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population. Conditions of extreme isolation generally include a combination of sensory deprivation, lack of contact with other persons, enforced idleness, minimal out-of-cell time, and lack of outdoor recreation.

(c) All prisoners placed in segregated housing should be provided with meaningful forms of mental, physical, and social stimulation. Depending upon individual assessments of risks, needs, and the reasons for placement in the segregated setting, those forms of stimulation should include:

- (i) in-cell programming, which should be developed for prisoners who are not permitted to leave their cells;
- (ii) additional out-of-cell time, taking into account the size of the prisoner's cell and the length of time the prisoner has been housed in this setting;
- (iii) opportunities to exercise in the presence of other prisoners, although, if necessary, separated by security barriers;
- (iv) daily face-to-face interaction with both uniformed and civilian staff; and
- (v) access to radio or television for programming or mental stimulation, although such access should not substitute for human contact described in subdivisions (i) to (iv).

(d) Prisoners placed in segregated housing for reasons other than discipline should be allowed as much out-of-cell time and programming participation as practicable, consistent with security.

(e) No cell used to house prisoners in segregated housing should be smaller than 80 square feet, and cells should be designed to permit prisoners assigned to them to converse with and be observed by staff. Physical features that facilitate suicide attempts should be eliminated in all segregation cells. Except if required for security or safety reasons for a particular prisoner, segregation cells should be equipped in compliance with Standard 23-3.3(b).

(f) Correctional staff should monitor and assess any health or safety concerns related to the refusal of a prisoner in segregated housing to eat or drink, or to participate in programming, recreation, or out-of-cell activity.

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*TStandard 23-3.9 Conditions during lockdown*

## **Standard 23-3.9      Conditions during lockdown**

(a)      The term “lockdown” means a decision by correctional authorities to suspend activities in one or more housing areas of a correctional facility and to confine prisoners to their cells or housing areas.

(b)      A lockdown of more than one day should be imposed only to restore order; to address an imminent threat of violence, disorder, or serious contagion; or to conduct a comprehensive search of the facility.

(c)      During any lockdown, correctional authorities should not suspend medical services, food service, and provision of necessities, although necessary restrictions in these services should be permitted. Prisoners should continue to have unrestricted access to toilets, washbasins, and drinking water. Except in the event of an emergency lockdown of less than [72 hours] in which security necessitates denial of such access, prisoners should be afforded access to showers, correspondence, delivery of legal materials, and grievance procedures.

(d)      In the event of a lockdown of longer than [7 days], a qualified mental health professional should visit the affected housing units at least weekly to observe and talk with prisoners in order to assess their mental health and provide necessary services.

(e)      A lockdown should last no longer than necessary. As the situation improves, privileges and activities for the affected area should be progressively increased. Procedures should exist for identifying individual prisoners who did not participate in incidents that led to the lockdown and whose access to programs and movement within the facility may be safely restored prior to the termination of lockdown status. In the extraordinary situation that a lockdown lasts longer than [30 days], officials should mitigate the risks of mental and physical deterioration by increasing out-of-cell time and in-cell programming opportunities.

(f)      Correctional officials should not use a lockdown to substitute for disciplinary sanctions or for reclassification of prisoners.

**PART IV: RULES OF CONDUCT AND DISCIPLINE**

**Standard 23-4.1 Rules of conduct and informational handbook**

(a) Correctional administrators and officials should promulgate clear written rules for prisoner conduct, including specific definitions of disciplinary offenses, examples of conduct that constitute each type of offense, and a schedule indicating the minimum and maximum possible punishment for each offense.

(b) Upon a prisoner's entry to a correctional facility, correctional authorities should provide the prisoner a personal copy of the rules for prisoner conduct and an informational handbook written in plain language. A written translation in a language the prisoner understands should be provided within a reasonable period of time to each literate prisoner who does not understand English. Copies of the rules and handbook in the languages a facility's prisoners understand should also be available in areas of the facility readily accessible to prisoners, including libraries. Staff should explain and read the rules and the handbook to any prisoner unable to read them by reason of illiteracy or disability.

(c) The handbook should contain specific criteria and procedures for discipline and classification decisions, including decisions involving security status and work and housing assignments. In addition, the handbook should set forth the facility's policy forbidding staff sexual contact or exploitation of prisoners, and the procedures for making complaints, filing grievances, and appealing grievance denials, as well as describing any types of complaints deemed not properly the subject of the grievance procedures.

(d) The handbook should specify the authorized means by which prisoners should seek information, make requests, obtain medical or mental health care, seek an accommodation relating to disability or religion, report an assault or threat, and seek protection.

(e) Correctional officials and administrators should annually review and update facility and agency rules and regulations to ensure that they comport with current legal standards. Correctional officials should annually review and update the handbooks provided to prisoners to ensure that they comport with current legal standards, facility and agency rules, and practice.

**Standard 23-4.2 Disciplinary hearing procedures**

(a) Correctional authorities should not seek to impose a disciplinary sanction upon a prisoner for misconduct unless the misconduct is a criminal offense or the prisoner was given prior written and effective notice of the violated rule.

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*Standard 23-4.2 Disciplinary hearing procedures*

(b) Informal resolution of minor disciplinary violations should be encouraged provided that prisoners have notice of the range of sanctions that may be imposed as a result of such an informal resolution, those sanctions are only minimally restrictive, and the imposition of a sanction is recorded and subject to prompt review by supervisory correctional staff, ordinarily on the same day.

(c) Correctional authorities should be permitted to confine a prisoner in segregated housing pending the hearing required by subdivision (d) of this Standard, if necessary for individual safety or institutional security. Such prehearing confinement should not exceed [3 days] unless necessitated by the prisoner's request for a continuance or by other demonstrated good cause. Prisoners should receive credit against any disciplinary sentence for time served in prehearing confinement if prehearing conditions were substantially similar to conditions in disciplinary segregation.

(d) When the possible sanction for a disciplinary offense includes the delay of a release date, loss of sentencing credit for good conduct or good conduct time earning capability, or placement in disciplinary segregation, a prisoner should be found to have committed that offense only after an individualized determination, by a preponderance of the evidence. In addition, the prisoner should be afforded, at a minimum, the following procedural protections:

- (i) at least 24 hours in advance of any hearing, written and effective notice of the actions alleged to have been committed, the rule alleged to have been violated by those actions, and the prisoner's rights under this Standard;
- (ii) an impartial decision-maker;
- (iii) a hearing at which the prisoner may be heard in person and, absent an individualized determination of good cause, has a reasonable opportunity to present available witnesses and documentary and physical evidence;
- (iv) absent an individualized determination of good cause, opportunity for the prisoner to confront and cross-examine any witnesses or, if good cause to limit such confrontation is found, to propound questions to be relayed to the witnesses;
- (v) an interpreter, if necessary for the prisoner to understand or participate in the proceedings;
- (vi) if the decision-maker determines that a prisoner is unable to prepare and present evidence and arguments effectively on his or her own behalf, counsel or some other advocate for the prisoner, including a member of the correctional staff or another prisoner with suitable capabilities;
- (vii) an independent determination by the decision-maker of the reliability and credibility of any confidential informants;

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- (viii) a written statement setting forth the evidence relied on and the reasons for the decision and the sanction imposed, rendered promptly but no later than [5 days] after conclusion of the hearing except in exceptional circumstances where good cause for the delay exists; and
- (ix) opportunity for the prisoner to appeal within [5 days] to the chief executive officer of the facility or higher administrative authority, who should issue a written decision within [10 days] either affirming or reversing the determination of misconduct and approving or modifying the punishment imposed.

(e) If correctional officials conduct a disciplinary proceeding during the pendency of a criminal investigation or prosecution, correctional authorities should advise the prisoner of the right to remain silent during the proceeding, and should not use that silence against the prisoner.

(f) A prisoner should be permitted to waive the right to a hearing if the prisoner so chooses after being informed of the disciplinary offense of which he or she is accused and the potential penalties and other consequences; such a waiver should be made in person to a designated correctional official who should accept it only if the prisoner understands the consequences.

**Standard 23-4.3 Disciplinary sanctions**

- (a) Correctional authorities should be permitted to impose a range of disciplinary sanctions to maintain order and ensure the safe custody of prisoners. Sanctions should be reasonable in light of the offense and the prisoner's circumstances, including disciplinary history and any mental illness or other cognitive impairment. In addition to the limitations itemized in Standard 23-3.7, sanctions should never include:
- (i) corporal punishment;
  - (ii) conditions of extreme isolation as described in Standard 23-3.8(b);
  - (iii) use of restraints, such as handcuffs, chains, irons, strait-jackets, or restraint chairs; or
  - (iv) any other form of cruel, inhuman, or degrading treatment.
- (b) Only the most severe disciplinary offenses, in which safety or security are seriously threatened, ordinarily warrant a sanction that exceeds [30 days] placement in disciplinary housing, and no placement in disciplinary housing should exceed one year.
- (c) No disciplinary sanction should ever be administered by other prisoners, even under the direction of correctional authorities.

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*Standard 23-5.1 Personal security and protection from harm*

## **PART V: PERSONAL SECURITY**

### **Standard 23-5.1 Personal security and protection from harm**

(a) Correctional authorities should protect prisoners from physical injury, corporal punishment, sexual assault, extortion, harassment, and personal abuse, among other harms.

(b) Correctional authorities should exercise reasonable care with respect to property prisoners lawfully possess or have a right to reclaim. A remedy should be reasonably available to prisoners if correctional authorities negligently or intentionally destroy or lose such property.

### **Standard 23-5.2 Prevention and investigation of violence**

(a) Correctional and governmental authorities should take all practicable actions to reduce violence and the potential for violence in correctional facilities and during transport, including:

- (i) using a validated objective classification system and instrument as provided in Standard 23-2.2;
- (ii) preventing crowding as provided in Standard 23-3.1(b);
- (iii) ensuring adequate and appropriate supervision of prisoners during transport and in all areas of the facility, preferably direct supervision in any congregate areas;
- (iv) training staff and volunteers appropriately as provided in Standard 23-10.3;
- (v) preventing introduction of drugs and other contraband, and providing substance abuse treatment as provided in Standard 23-8.2(b);
- (vi) preventing opportunities for prisoners to exercise coercive authority or control over other prisoners, including through access to another prisoner's confidential information;
- (vii) preventing opportunities for gangs to gain any power;
- (viii) promptly separating prisoners when one may be in danger from another;
- (ix) preventing staff from tolerating, condoning, or implicitly or explicitly encouraging fighting, violence, bullying, or extortion;
- (x) regularly assessing prisoners' level of fear of violence and responding accordingly to prisoners' concerns; and
- (xi) preventing idleness by providing constructive activities for all prisoners as provided in Standards 23-8.2 and 23-8.4.

(b) Correctional officials should promptly and thoroughly investigate and make a record of all incidents involving violence, and should take appropriate remedial action.

**Standard 23-5.3 Sexual abuse**

(a) Correctional authorities should protect all prisoners from sexual assault by other prisoners, as well as from pressure by other prisoners to engage in sexual acts. Correctional officials should strive to create an institutional culture in which sexual assault or sexual pressure is not tolerated, expected, or made the subject of humor by staff or prisoners. Correctional authorities should evaluate reports of sexual assault or threats of sexual assault without regard to a prisoner's sexual orientation, gender, or gender identity and should not be permitted to retaliate formally or informally against prisoners who make such reports. Correctional authorities should not presume that sexual activity among prisoners is consensual.

(b) Correctional authorities should protect all prisoners from any sexual contact with or sexual exploitation by staff, including volunteers and employees of other governmental or private organizations who work in the correctional facility. States and the federal government should prohibit by statute and correctional agencies by policy any form of sexual contact between staff and prisoners.

(c) Correctional officials should establish and publicize the means by which prisoners and others may easily and confidentially report to any staff member or appropriate outside entity a sexual assault or pressure to engage in sexual acts, sexual contact or exploitation involving a prisoner and staff, or the fear of such conduct. Correctional authorities should promptly relay any such report, or any other information they obtain regarding such conduct, to the chief executive officer of the facility. Correctional officials should implement a policy of prompt and thorough investigation of any credible allegation of the threat or commission of prisoner sexual assault or sexual contact with or sexual exploitation by staff. Correctional officials should establish criteria for forwarding such reports to a specialized unit trained in the appropriate investigation methods. Correctional authorities should take steps necessary to protect the prisoner from further sexual assaults, contacts, or exploitation. If a complaining prisoner and the subject of the complaint are separated during any such investigation, care should be taken to minimize conditions for the complaining prisoner that a reasonable person would experience as punitive.

(d) Medical treatment and testing, and psychological counseling, should be immediately available to victims of sexual assault or of sexual contact with or sexual exploitation by staff. Correctional authorities, including health care staff, should be alert to identify and document signs of sexual assault and should implement a protocol for providing victims with a thorough forensic medical examination performed by an appropriately trained qualified medical professional.

(e) Correctional authorities, including health care staff, should not reveal information about any incident of prisoner sexual abuse to any person, except to other staff or law enforcement personnel who need to know about the incident in order to make treatment, investigation, or other security or management decisions, or to appropriate external oversight officials or agencies.

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**Standard 23-5.4 Self-harm and suicide prevention**

## **Standard 23-5.4 Self-harm and suicide prevention**

(a) Correctional officials should implement procedures to identify prisoners at risk for suicide and to intervene to prevent suicides.

(b) When the initial screening pursuant to Standard 23-2.1 or any subsequent observation identifies a risk of suicide, the prisoner should be placed in a safe setting and promptly evaluated by a qualified mental health professional, who should determine the degree of risk, appropriate level of ongoing supervision, and appropriate course of mental health treatment.

(c) Instead of isolating prisoners at risk of suicide, correctional authorities should ordinarily place such prisoners in housing areas that are designed to be suicide resistant and that allow staff a full and unobstructed view of the prisoners inside. A suicidal prisoner's clothing should be removed only if an individualized assessment finds such removal necessary, and the affected prisoner should be provided with suicide resistant garments that are sanitary, adequately modest, and appropriate for the temperature. Physical restraints should be used only as a last resort and their use should comply with the limitations in Standard 23-5.9.

(d) At a minimum, prisoners presenting a serious risk of suicide should be housed within sight of staff and observed by staff, face-to-face, at irregular intervals of no more than 15 minutes. Prisoners currently threatening or attempting suicide should be under continuous staff observation. Suicide observation should be documented, and prisoners under suicide observation should be evaluated by a qualified mental health professional prior to being removed from observation.

(e) Correctional authorities should minimize the risk of suicide in housing areas and other spaces where prisoners may be unobserved by staff by eliminating, to the extent practicable, physical features that facilitate suicide attempts.

(f) When staff observe a prisoner who appears to have attempted or committed suicide, they should administer appropriate first-aid measures immediately until medical personnel arrive and assess the situation. Cut-down tools should be readily available to security personnel, who should be trained in first aid and cardiopulmonary resuscitation, cut-down techniques, and emergency notification procedures.

## **Standard 23-5.5 Protection of vulnerable prisoners**

(a) The term "protective custody" means housing of a prisoner in segregated housing or under any other substantially greater restrictions than those applicable to the general population with which the prisoner would otherwise be housed, in order to protect the prisoner from harm.

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**Standard 23-5.6 Use of force**

(b) Correctional officials should implement procedures for identifying those prisoners who are particularly vulnerable to physical or sexual abuse, manipulation, or psychologically harmful verbal abuse by other prisoners or by staff, and for protecting these and other prisoners who request and need protection.

(c) Correctional authorities should minimize the extent to which vulnerable prisoners needing protection are subjected to rules and conditions a reasonable person would experience as punitive. Correctional authorities should not stigmatize prisoners who need protection. Such prisoners should not be housed with prisoners who have been identified as potential aggressors.

(d) Correctional authorities should not assign a prisoner to involuntary protective custody for a period exceeding [30 days] unless there is a serious and credible threat to the prisoner's safety and staff are unable to adequately protect the prisoner either in the general population or by a transfer to another facility.

(e) At intervals not to exceed three months, correctional authorities should afford a prisoner placed in protective custody a review to determine whether there is a continuing need for separation from the general population.

(f) Consistent with such confidentiality as is required to prevent a significant risk of harm to other persons, a prisoner being evaluated for involuntary placement in protective custody should be permitted reasonable access to materials considered at both the initial and the periodic reviews, and should be allowed to meet with and submit written statements to persons reviewing the prisoner's classification.

(g) If correctional authorities assign a prisoner to protective custody, such a prisoner should be:

- (i) housed in the least restrictive environment practicable, in segregated housing only if necessary, and in no case in a setting that is used for disciplinary housing;
- (ii) allowed all of the items usually authorized for general population prisoners;
- (iii) provided opportunities to participate in programming and work as described in Standards 23-8.2 and 8.4; and
- (iv) provided the greatest practicable opportunities for out-of-cell time.

**Standard 23-5.6 Use of force**

(a) "Force" means offensive or defensive physical contact with a prisoner, including blows, pushes, or defensive holds, whether or not involving batons or other instruments or weapons; discharge of chemical agents; discharge of electronic weaponry; and application of restraints such as handcuffs, chains, irons, strait-jackets, or restraint chairs. However, force does not include a firm hold, or use of hand or leg restraints, or fitting of a stun belt, on an unresisting prisoner.

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*Standard 23-5.6 Use of force*

- (b) Correctional authorities should use force against a prisoner only:
  - (i) to protect and ensure the safety of staff, prisoners, and others; to prevent serious property damage; or to prevent escape;
  - (ii) if correctional authorities reasonably believe the benefits of force outweigh the risks to prisoners and staff; and
  - (iii) as a last alternative after other reasonable efforts to resolve the situation have failed.
  
- (c) In no case should correctional authorities use force against a prisoner:
  - (i) to enforce an institutional rule or an order unless the disciplinary process is inadequate to address an immediate security need;
  - (ii) to gratuitously inflict pain or suffering, punish past or present conduct, deter future conduct, intimidate, or gain information; or
  - (iii) after the risk that justified the use of force has passed.
  
- (d) A correctional agency should implement reasonable policies and procedures governing staff use of force against prisoners; these policies should establish a range of force options and explicitly prohibit the use of premature, unnecessary, or excessive force. Control techniques should be intended to minimize injuries to both prisoners and staff. Except in highly unusual circumstances in which a prisoner poses an imminent threat of serious bodily harm, staff should not use types of force that carry a high risk of injury, such as punches, kicks, or strikes to the head, neck, face, or groin.
  
- (e) Correctional authorities should not be assigned responsibilities potentially requiring the use of force unless they are appropriately trained for the anticipated type of force, and are initially and periodically evaluated as being physically and mentally fit for such hazardous and sensitive duties.
  
- (f) Except in an emergency, force should not be used unless authorized by a supervisory officer. Such an officer should be called to the scene whenever force is used, to direct and observe but ordinarily not to participate in the physical application of force, and should not leave the scene until the incident has come to an end. To the extent practicable, continually operating stationary video cameras should be used in areas in which uses of force are particularly likely, such as intake areas, segregation, and mental health units. Correctional authorities should video and audio record every planned or anticipated use of force from the initiation of the action, and should begin recording any other use of force incident as soon as practicable after the incident starts.
  
- (g) If practicable, staff should seek intervention and advice from a qualified mental health professional prior to a planned or predictable use of force against a prisoner who has a history of mental illness or who is exhibiting behaviors commonly associated with mental illness.

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**Standard 23-5.7 Use of deadly force**

(h) Following any incident in which a prisoner is subjected to use of either chemical agents or any kind of weapon or is injured during a use of force, the prisoner should receive an immediate health care examination and appropriate treatment, including decontamination. Health care personnel should document any injuries sustained.

(i) Correctional agency policies should strive to ensure full staff accountability for all uses of force. Correctional authorities should memorialize and facilitate review of uses of force. Following any incident that involves a use of force against a prisoner, participants and witnesses should be interviewed or should file written statements. Correctional authorities should prepare a complete file for the chief executive officer of the facility, including a report, any recordings, and written statements and medical reports for both prisoners and staff. Correctional officials and administrators should review and retain the file for purposes of management, staff discipline, training, and the identification of trends.

(j) A jurisdiction or correctional agency should establish criteria, based on the extent of prisoner injury and the type of force, for forwarding use of force reports to a person or office outside the relevant facility's chain of command for a more in-depth investigation. Such investigation should take place for every use of force incident that results in a death or major traumatic injury to a prisoner or to staff.

**Standard 23-5.7 Use of deadly force**

(a) "Deadly force" means force that creates or is intended to create a substantial risk of death or serious bodily harm. The use of firearms should always be considered the use of deadly force.

(b) Correctional agency policies and procedures should authorize the use of deadly force only by security personnel trained in the use of deadly force, and only in a situation when correctional authorities reasonably believe that deadly force is necessary to prevent imminent death or serious bodily harm or to prevent an escape from a secure correctional facility, subject to the qualification in subdivision (c) of this Standard.

(c) Deadly force to prevent an escape should be permitted only when the prisoner is about to leave the secure perimeter of a correctional facility without authorization or, if the prisoner is permitted to be on the grounds outside the secure perimeter, the prisoner is about to leave the facility grounds without authorization. Before staff use a firearm to prevent an escape, they should shout a warning and, if time and circumstances allow, summon other staff to regain control without shooting. For purposes of this subdivision, a prisoner in custody for transit to or from a secure correctional facility is considered to be within the perimeter of such facility.

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**Standard 23-5.8 Use of chemical agents, electronic weaponry, and canines**

(d) The location and storage of firearms should be strictly regulated. Correctional authorities carrying firearms should not be assigned to positions that are accessible to prisoners or in which they come into direct contact with prisoners, except during transport or supervision of prisoners outside the secure perimeter, or in emergency situations. In those situations, each staff member should also have available for use a weapon less likely to be lethal.

## **Standard 23-5.8 Use of chemical agents, electronic weaponry, and canines**

- (a) Correctional administrators should develop and implement policies governing use of chemical agents and electronic weaponry. Such policies should:
- (i) provide for testing and training;
  - (ii) specify that, as with any use of force, chemical agents and electronic weaponry are to be used only as a last resort after the failure of other reasonable conflict resolution techniques;
  - (iii) cover the medical and tactical circumstances in which use of such agents and weaponry is inappropriate or unsafe;
  - (iv) forbid the use of such agents and weaponry directly on vital parts of the body, including genitals and, for electronic weaponry, eyes, mouth, and neck; and
  - (v) forbid the use of electronic weaponry in drive-stun or direct contact mode.
- (b) Correctional agency policy should prohibit use of electronic or chemical weaponry for the following purposes:
- (i) as punishment;
  - (ii) as a prod;
  - (iii) to rouse an unconscious, impaired, or intoxicated prisoner;
  - (iv) against any prisoner using passive resistance when there is no immediate threat of bodily harm; or
  - (v) to enforce an order after a prisoner has been immobilized or a threat has been neutralized.
- (c) Correctional officials should implement any appropriate facility-specific restrictions on use of chemical agents and electronic weaponry that are appropriate for the particular facility and its prisoner population, and should promulgate policy that sets forth in detail the circumstances in which such weapons may be used.
- (d) When practicable, before using either chemical agents or electronic weaponry against a prisoner, staff should determine whether the prisoner has any contraindicating medical conditions, including mental illness and intoxication, and make a contemporaneous record of this determination.

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**Standard 23-5.9 Use of restraint mechanisms and techniques**

(e) Correctional authorities should be permitted to use canines inside the secure perimeter of a correctional facility only for searches and, except in emergencies, only if prisoners have been moved away from the area to be searched. Canines should never be used for purposes of intimidation or control of a prisoner or prisoners.

**Standard 23-5.9 Use of restraint mechanisms and techniques**

(a) Correctional authorities should not use restraint mechanisms such as handcuffs, leg irons, straitjackets, restraint chairs, and spit-masks as a form of punishment or retaliation. Subject to the remainder of this Standard, restraints should not be used except to control a prisoner who presents an immediate risk of self-injury or injury to others, to prevent serious property damage, for health care purposes, or when necessary as a security precaution during transfer or transport.

(b) When restraints are necessary, correctional authorities should use the least restrictive forms of restraints that are appropriate and should use them only as long as the need exists, not for a pre-determined period of time. Policies relating to restraints should take account of the special needs of prisoners who have physical or mental disabilities, and of prisoners who are under the age of eighteen or are geriatric, as well as the limitations specified in Standard 23-6.9 for pregnant prisoners or those who have recently given birth. Correctional authorities should take care to prevent injury to restrained prisoners, and should not restrain a prisoner in any manner that causes unnecessary physical pain or extreme discomfort, or that restricts the prisoner's blood circulation or obstructs the prisoner's breathing or airways. Correctional authorities should not hog-tie prisoners or restrain them in a fetal or prone position.

(c) Correctional authorities should prevent co-mingling of restrained and unrestrained prisoners either in a correctional facility or during transport.

(d) Other than as allowed by subdivision (e) of this Standard, correctional authorities should not use restraints in a prisoner's cell except immediately preceding an out-of-cell movement or for medical or mental health purposes as authorized by a qualified medical or mental health professional. Reasonable steps should be taken during movement to protect restrained prisoners from accidental injury.

(e) If restraints are used for medical or mental health care purposes, the restrained prisoner should, if possible, be placed in a health care area of the correctional facility, and the decision to use, continue, and discontinue restraints should be made by a qualified health care professional, in accordance with applicable licensing regulations.

(f) Four- or five-point restraints should be used only if a prisoner presents an immediate and extreme risk of serious self-injury or injury to others and only after less restrictive forms of restraint have been determined likely to be ineffective to control the prisoner's risky behavior. Whenever practicable, a qualified health care professional should participate in efforts to avoid using four- or five-point restraints.

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*Standard 23-5.9 Use of restraint mechanisms and techniques*

(g) If it is necessary for correctional authorities to apply four- or five-point restraints without participation of a qualified health care professional because the situation is an emergency and health care staff are not available, a qualified health care professional should review the situation as soon as possible and assess whether such restraints are appropriate. If correctional authorities have applied four- or five-point restraints without the participation of a qualified health care professional or if that professional disagrees with the application of the restraints, correctional authorities should notify the facility's chief executive office immediately on gaining control of the prisoner. The chief executive officer should decide promptly whether the use of such restraints should continue.

(h) Whether restraints are used for health care or for custodial purposes, during the period that a prisoner is restrained in a four- or five-point position, staff should follow established guidelines for use of the restraint mechanism that take into account the prisoner's physical condition, including health problems and body weight, should provide adequate nutrition, hydration, and toileting, and should take the following precautions to ensure the prisoner's safety:

- (i) for the entire period of restraint, the prisoner should be video- and audio-recorded;
- (ii) immediately, a qualified health care professional should conduct an in-person assessment of the prisoner's medical and mental health condition, and should advise whether the prisoner should be transferred to a medical or mental health unit or facility for emergency treatment;
- (iii) until the initial assessment by a qualified health care professional required by subdivision (ii), staff should continuously observe the prisoner, in person;
- (iv) after the initial medical assessment, at least every fifteen minutes medically trained staff should conduct visual observations and medical checks of the prisoner, log all checks, and evaluate the continued need for restraint;
- (v) at least every two hours, qualified health care staff should check the prisoner's range of motion and review the medical checks performed under subdivision (iv); and
- (vi) at least every four hours, a qualified medical professional should conduct a complete in-person evaluation to determine the prisoner's need for either continued restraint or transfer to a medical or mental health facility.

**PART VI: HEALTH CARE**

**Standard 23-6.1 General principles governing health care**

- (a) Correctional authorities should ensure that:
  - (i) a qualified health care professional is designated the responsible health authority for each facility, to oversee and direct the provision of health care in that facility;
  - (ii) prisoners are provided necessary health care, including preventive, routine, urgent, and emergency care;
  - (iii) such care is consistent with community health care standards, including standards relating to privacy except as otherwise specified in these Standards;
  - (iv) special health care protocols are used, when appropriate, for female prisoners, prisoners who have physical or mental disabilities, and prisoners who are under the age of eighteen or geriatric; and
  - (v) health care that is necessary during the period of imprisonment is provided regardless of a prisoner's ability to pay, the size of the correctional facility, or the duration of the prisoner's incarceration.
- (b) Prisoners should not be charged fees for necessary health care.
- (c) Dental care should be provided to treat prisoners' dental pain, eliminate dental pathology, and preserve and restore prisoners' ability to chew. Consistent with Standard 23-2.5, routine preventive dental care and education about oral health care should be provided to those prisoners whose confinement may exceed one year.
- (d) Prisoners should be provided timely access to appropriately trained and licensed health care staff in a safe and sanitary setting designed and equipped for diagnosis or treatment.
- (e) Health care should be based on the clinical judgments of qualified health care professionals, not on non-medical considerations such as cost and convenience. Clinical decisions should be the sole province of the responsible health care professionals, and should not be countermanded by non-medical staff. Work assignments, housing placements, and diets for each prisoner should be consistent with any health care treatment plan developed for that prisoner.
- (f) Prisoners should be provided basic educational materials relating to disease prevention, good health, hygiene, and proper usage of medication.

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*Standard 23-6.2 Response to prisoner health care needs*

## **Standard 23-6.2 Response to prisoner health care needs**

(a) Correctional authorities should implement a system that allows each prisoner, regardless of security classification, to communicate health care needs in a timely and confidential manner to qualified health care professionals, who should evaluate the situation and assess its urgency. Provision should be made for prisoners who face literacy, language, or other communication barriers to be able to communicate their health needs. No correctional staff member should impede or unreasonably delay a prisoner's access to health care staff or treatment.

(b) A prisoner suffering from a serious or potentially life-threatening illness or injury, or from significant pain, should be referred immediately to a qualified medical professional in accordance with written guidelines. Complaints of dental pain should be referred to a qualified dental professional, and necessary treatment begun promptly.

(c) When appropriate, health care complaints should be evaluated and treated by specialists. A prisoner who requires care not available in the correctional facility should be transferred to a hospital or other appropriate place for care.

## **Standard 23-6.3 Control and distribution of prescription drugs**

A correctional facility should store all prescription drugs safely and under the control and supervision of the physician in charge of the facility's health care program. Prescription drugs should be distributed in a timely and confidential manner. Ordinarily, only health care staff should administer prescription drugs, except that health care staff should be permitted to authorize prisoners to hold and administer their own asthma inhalers, and to implement other reasonable "keep on person" drug policies. In an emergency, or when necessary in a facility in which health care staff are available only part-time, medically trained correctional staff should be permitted to administer prescription drugs at the direction of qualified health care professionals. In no instance should a prisoner administer prescription drugs to another prisoner.

## **Standard 23-6.4 Qualified health care staff**

(a) Each correctional agency should employ or contract with a sufficient number of qualified medical, dental, and mental health professionals at each correctional facility to render preventive, routine, urgent, and emergency health care in a timely manner consistent with accepted health care practice and standards.

*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)***Standard 23-6.5 Continuity of care**

(b) Health care providers in a non-federal correctional facility should be fully licensed in the state in which the facility is located; health care providers in a federal correctional facility should be fully licensed in the United States. No health care provider should be permitted to practice in a correctional facility beyond the scope permissible for that individual provider outside of a correctional facility, given the provider's particular qualifications and licensing.

(c) Regardless of any training a prisoner may have had, no prisoner should be allowed to provide health care evaluation or treatment to any other prisoner,.

**Standard 23-6.5 Continuity of care**

(a) A correctional agency should ensure each prisoner's continuity of care, including with respect to medication, upon entry into the correctional system, during confinement and transportation, during and after transfer between facilities, and upon release. A prisoner's health care records and medication should travel with the prisoner in the event of a transfer between facilities, including facilities operated by different agencies.

(b) Prisoners who are determined to be lawfully taking prescription drugs or receiving health care treatment when they enter a correctional facility directly from the community, or when they are transferred between correctional facilities—including facilities operated by different agencies—should be maintained on that course of medication or treatment or its equivalent until a qualified health care professional directs otherwise upon individualized consideration.

**Standard 23-6.6 Adequate facilities, equipment, and resources**

(a) Health care areas in a correctional facility should be safe and sanitary, should include appropriately private areas for examination and treatment, and should be designed so that prisoners can hold confidential discussions with health care personnel.

(b) A correctional facility should have equipment necessary for routine health care and emergencies, and an adequately supplied pharmacy. Specialized equipment may be required in larger facilities and those serving prisoners with special medical needs. Smaller facilities should be permitted to provide for prisoners' health care needs by transferring them to other facilities or health care providers, but should have equipment that is reasonably necessary in light of its preexisting transfer arrangements.

(c) Hospitals and infirmaries operated by or within correctional facilities should meet the licensing standards applicable to similar, non-prison hospitals or infirmaries.

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**Standard 23-6.7 Quality improvement**

(d) Vehicles used to transport prisoners to and from medical facilities should be adequately equipped with emergency medical equipment and provisions for prisoners with special needs.

## **Standard 23-6.7 Quality improvement**

A correctional health care system should include an ongoing evaluation process to assess and improve the health care provided to prisoners and to enable health care staff to institute corrective care or other action as needed. The evaluation process should include mechanisms by which prisoners can provide both positive and negative comments about their care.

## **Standard 23-6.8 Health care records and confidentiality**

- (a) Prisoners' health care records should:
- (i) be compiled, maintained, and retained in accordance with accepted health care practice and standards;
  - (ii) not include criminal or disciplinary records unless a qualified health care professional finds such records relevant to the prisoner's health care evaluation or treatment;
  - (iii) be maintained in a confidential and secure manner, separately from non-health-care files;
  - (iv) accompany a prisoner to every facility to which the prisoner is transferred; and
  - (v) be available to the prisoner who is the subject of the records, absent an individualized finding of good cause.

(b) Information about a prisoner's health condition should not be disclosed to other prisoners. No prisoner should have access to any other prisoner's health care records.

(c) Information about a prisoner's health condition should be shared with correctional staff only when necessary and permitted by law, and only to the extent required for:

- (i) the health and safety of the prisoner or of other persons;
- (ii) the administration and maintenance of the facility or agency;
- (iii) quality improvement relating to health care; or
- (iv) law enforcement purposes.

(d) Health care personnel or correctional authorities should provide information about a prisoner's health condition to that prisoner's family or other persons designated by the prisoner if the prisoner consents to such disclosure or, unless the prisoner has previously withheld consent, if the prisoner's condition renders the prisoner unable to consent or if the prisoner has died.

**Standard 23-6.9 Pregnant prisoners and new mothers**

(a) A pregnant prisoner should receive necessary prenatal and postpartum care and treatment, including an adequate diet, clothing, appropriate accommodations relating to bed assignment and housing area temperature, and childbirth and infant care education. Any restraints used on a pregnant prisoner or one who has recently delivered a baby should be medically appropriate; correctional authorities should consult with health care staff to ensure that restraints do not compromise the pregnancy or the prisoner's health.

(b) A prisoner in labor should be taken to an appropriate medical facility without delay. A prisoner should not be restrained while she is in labor, including during transport, except in extraordinary circumstances after an individualized finding that security requires restraint, in which event correctional and health care staff should cooperate to use the least restrictive restraints necessary for security, which should not interfere with the prisoner's labor.

(c) Governmental authorities should facilitate access to abortion services for a prisoner who decides to exercise her right to an abortion, as that right is defined by state and federal law, through prompt scheduling of the procedure upon request and through the provision of transportation to a facility providing such services.

(d) Governmental authorities should ensure that no birth certificate states that a child was born in a correctional facility.

(e) Governmental and correctional authorities should strive to meet the legitimate needs of prisoner mothers and their infants, including a prisoner's desire to breastfeed her child. Governmental authorities should ordinarily allow a prisoner who gives birth while in a correctional facility or who already has an infant at the time she is admitted to a correctional facility to keep the infant with her for a reasonable time, preferably on extended furlough or in an appropriate community facility or, if that is not practicable or reasonable, in a nursery at a correctional facility that is staffed by qualified persons. Governmental authorities should provide appropriate health care to children in such facilities.

(f) If long-term imprisonment is anticipated, a prisoner with an infant should be helped to develop necessary plans for alternative care for the infant following the period described in subdivision (e) of this Standard, in coordination with social service agencies. A prisoner should be informed of the consequences for the prisoner's parental rights of any arrangements contemplated. When a prisoner and infant are separated, the prisoner should be provided with counseling and other mental health support.

## **Standard 23-6.10 Impairment-related aids**

Prisoners whose health or institutional adjustment would otherwise be adversely affected should be provided with medical prosthetic devices or other impairment-related aids, such as eyeglasses, hearing aids, or wheelchairs, except when there has been an individualized finding that such an aid would be inconsistent with security or safety. When the use of a specific aid believed reasonably necessary by a qualified medical professional is deemed inappropriate for security or safety reasons, correctional authorities should consider alternatives to meet the health needs of the prisoner.

## **Standard 23-6.11 Services for prisoners with mental disabilities**

(a) A correctional facility should provide appropriate and individualized mental health care treatment and habilitation services to prisoners with mental illness, mental retardation, or other cognitive impairments.

(b) Correctional officials should implement a protocol for identifying and managing prisoners whose behavior is indicative of mental illness, mental retardation, or other cognitive impairments. In addition to implementing the mental health screening required in Standard 23-2.1 and mental health assessment required in Standard 23-2.5, this protocol should require that the signs and symptoms of mental illness or other cognitive impairments be documented and that a prisoner with such signs and symptoms be promptly referred to a qualified mental health professional for evaluation and treatment.

(c) A correctional facility should provide prisoners diagnosed with mental illness, mental retardation, or other cognitive impairments appropriate housing assignments and programming opportunities in accordance with their diagnoses, vulnerabilities, functional impairments, and treatment or habilitation plans. A correctional agency should develop a range of housing options for such prisoners, including high security housing; residential housing with various privilege levels dependent upon treatment and security assessments; and transition housing to facilitate placement in general population or release from custody.

(d) When appropriate for purposes of evaluation or treatment, correctional authorities should be permitted to separate from the general population prisoners diagnosed with mental illness, mental retardation, or other cognitive impairments who have difficulty conforming to the expectations of behavior for general population prisoners. However, prisoners diagnosed with serious mental illness should not be housed in settings that may exacerbate their mental illness or suicide risk, particularly in settings involving sensory deprivation or isolation.

*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
*Standard 23-6.12 Prisoners with chronic or communicable diseases*

**Standard 23-6.12 Prisoners with chronic or communicable diseases**

(a) Correctional officials should provide for the voluntary medically appropriate testing of all prisoners for widespread chronic and serious communicable diseases and for appropriate treatment, without restricting the availability of treatment based on criteria not directly related to the prisoner's health.

(b) Correctional authorities should not discriminate against a prisoner in housing, programs, or other activities or services because the prisoner has a chronic or communicable disease, including HIV or AIDS, unless the best available objective evidence indicates that participation of the prisoner poses a direct threat to the health or safety of others. When medically necessary, correctional authorities should be permitted to place a prisoner with a readily transmissible contagious disease in appropriate medical isolation or to restrict such a prisoner in other ways to prevent contagion of others.

(c) Any accommodation made to address the special needs or risks of a prisoner with a communicable disease should not unnecessarily reveal that prisoner's health condition.

**Standard 23-6.13 Prisoners with gender identity disorder**

A prisoner diagnosed with gender identity disorder should be offered appropriate treatment. At a minimum, a prisoner who has begun or completed the medical process of gender reassignment prior to admission to a correctional facility should be offered treatment necessary to maintain the prisoner at the stage of transition reached at the time of admission, unless a qualified health care professional determines that such treatment is medically inadvisable for the prisoner.

**Standard 23-6.14 Voluntary and informed consent to treatment**

(a) Correctional officials should implement a policy to require voluntary and informed consent prior to a prisoner's health care examination, testing, or treatment, except as provided in this Standard. A prisoner who lacks the capacity to make decisions consenting or withholding consent to care should have a surrogate decision-maker designated according to applicable law, although that decision-maker's consent should not substitute for the protections specified in Standard 23-6.15. A competent prisoner who refuses food should not be force-fed except pursuant to a court order.

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**Standard 23-6.15 Involuntary mental health treatment and transfer**

(b) Prisoners should be informed of the health care options available to them. If a prisoner refuses health care examination, testing, or treatment, a qualified health care professional should discuss the matter with the prisoner and document in the prisoner's health care record both the discussion and the refusal; the health care professional should attempt to obtain the prisoner's signature attesting to the refusal. Any claim that a prisoner is refusing treatment for a serious medical or mental health condition should be investigated by a qualified health care professional to ensure that the refusal is informed and voluntary, and not the result of miscommunication or misunderstanding. If a prisoner refuses care in such a situation, health care staff should take steps to involve other trusted individuals, such as clergy or the prisoner's family members, to communicate to the prisoner the importance of the decision.

(c) A prisoner who refuses testing or treatment for a serious communicable disease should be housed in a medically appropriate setting until a qualified health care professional can ascertain whether the prisoner is contagious. Involuntary testing or treatment should be permitted only if:

- (i) there is a significant risk of the spread of disease;
- (ii) no less intrusive alternative is available; and
- (iii) involuntary testing or treatment would accord with applicable law for a non-prisoner.

## **Standard 23-6.15 Involuntary mental health treatment and transfer**

(a) Involuntary mental health treatment of a prisoner should be permitted only if the prisoner is suffering from a serious mental illness, non-treatment poses a significant risk of serious harm to the prisoner or others, and no less intrusive alternative is reasonably available.

(b) Prior to long-term involuntary transfer of a prisoner with a serious mental illness to a dedicated mental health facility, the prisoner should be afforded, at a minimum, the following procedural protections:

- (i) at least [3 days] in advance of the hearing, written, and effective notice of the fact that involuntary transfer is being proposed, the basis for the transfer, and the prisoner's rights under this Standard;
- (ii) decision-making by a judicial or administrative hearing officer independent of the correctional agency, or by an independent committee that does not include any health care professional responsible for treating or referring the prisoner for transfer or any other correctional staff but does include at least one qualified mental health professional;
- (iii) a hearing at which the prisoner may be heard in person and, absent an individualized determination of good cause, present testimony of available witnesses, including the prisoner's treating mental health professional, and documentary and physical evidence;

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- (iv) absent an individualized determination of good cause, opportunity for the prisoner to confront and cross-examine witnesses or, if good cause to limit such confrontation is found, to propound questions to be relayed to the witnesses;
- (v) an interpreter, if necessary for the prisoner to understand or participate in the proceedings;
- (vi) counsel, or some other advocate with appropriate mental health care training;
- (vii) a written statement setting forth in detail the evidence relied on and the reasons for a decision to transfer;
- (viii) an opportunity for the prisoner to appeal to a mental health care review panel or to a judicial officer; and
- (ix) a de novo hearing held every [6 months], with the same procedural protections as here provided, to decide if involuntary placement in the mental health facility remains necessary.

(c) In an emergency situation requiring the immediate involuntary transfer of a prisoner with serious mental illness to a dedicated mental health facility because of a serious and imminent risk to the safety of the prisoner or others, the chief executive of a correctional facility should be authorized to order such a transfer, but the procedural protections set out in subdivision (b) of this Standard should be provided within [7 days] after the transfer.

(d) Prior to involuntary mental health treatment of a prisoner with a serious mental illness, the prisoner should be afforded, at a minimum, the procedural protections specified in subdivision (b) of this Standard for involuntary mental health transfers, except that:

- (i) decision-making in the first instance and on appeal should be by a judicial or administrative hearing officer independent of the correctional agency, or by a neutral committee that includes at least one qualified mental health professional and that may include appropriate correctional agency staff, but does not include any health care professional responsible for treating or referring the prisoner for transfer;
- (ii) the notice should set forth the mental health staff's diagnosis and basis for the proposed treatment, a description of the proposed treatment—including, where relevant, the medication name and dosage—and the less-intrusive alternatives considered and rejected; and
- (iii) the de novo hearing held every [6 months] should decide whether to continue or modify any involuntary treatment, and in reaching that decision should consider, in addition to other relevant evidence, evidence of side effects.

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*Standard 23-6.15 Involuntary mental health treatment and transfer*

(e) In an emergency situation requiring the immediate involuntary medication of a prisoner with serious mental illness, an exception to the procedural requirements described in subdivision (d) of this Standard should be permitted, provided that the medication is administered by a qualified health care professional and that it is discontinued within 72 hours unless the requirements in subdivision (d) of this Standard are met.

(f) Notwithstanding a finding pursuant to subdivision (d) of this Standard that involuntary treatment is appropriate, mental health care staff should continue attempting to elicit the prisoner's consent to treatment.

## **PART VII: PERSONAL DIGNITY**

### **Standard 23-7.1 Respect for prisoners**

(a) Correctional authorities should treat prisoners in a manner that respects their human dignity, and should not subject them to harassment, bullying, or disparaging language or treatment, or to invidious discrimination based on race, gender, sexual orientation, gender identity, religion, language, national origin, citizenship, age, or physical or mental disability.

(b) Correctional authorities should implement policies and practices to prevent any such discrimination, harassment, or bullying of prisoners by other prisoners.

### **Standard 23-7.2 Prisoners with disabilities and other special needs**

(a) If a prisoner with a disability is otherwise qualified to use a correctional facility, program, service, or activity, correctional authorities should provide such a prisoner ready access to and use of the facility, program, service, or activity, and should make reasonable modifications to existing policies, procedures, and facilities if such modifications are necessary. Modifications are not required if they would pose an undue burden to the facility, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the prisoner or others. Disabled prisoners' access to facilities, programs, services, or activities should be provided in the most integrated setting appropriate.

(b) To the extent practicable, a prisoner who does not have a disability but does have special needs that affect the prisoner's ability to participate in a prison program, service, or activity should receive programs, services, and activities comparable to those available to other prisoners. Correctional authorities should assess and make appropriate accommodations in housing placement, medical services, work assignments, food services, and treatment, exercise, and rehabilitation programs for such a prisoner.

(c) A prisoner has the right to refuse proffered accommodations related to a disability or other special needs, provided that the refusal does not pose a security or safety risk.

(d) There should be no adverse consequences, such as loss of sentencing credit for good conduct, discipline, or denial of parole, for a prisoner who is unable to participate in employment, educational opportunities, or programming due to a disability or other special needs that cannot be accommodated. Such a prisoner should have the opportunity to earn an equal amount of good conduct time credit for participating in alternative activities.

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*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
**Standard 23-7.3 Religious freedom**

- (e) Correctional authorities should communicate effectively with prisoners who have disabling speech, hearing, or vision impairments by providing, at a minimum:
  - (i) hearing and communication devices, or qualified sign language interpretation by a non-prisoner, or other communication services, as needed, including for disciplinary proceedings or other hearings, processes by which a prisoner may make requests or lodge a complaint, and during provision of programming and health care;
  - (ii) closed captioning on any televisions accessible to prisoners with hearing impairments;
  - (iii) readers, taped texts, Braille or large print materials, or other necessary assistance for effective written communication between correctional authorities and prisoners with vision impairments, and when a prisoner with a vision impairment is permitted to review prison records, as in preparation for a disciplinary or other hearing; and
  - (iv) fire alarms and other forms of emergency notification that communicate effectively with prisoners with hearing or vision impairments.
  
- (f) Correctional authorities should make reasonable attempts to communicate effectively with prisoners who do not read, speak, or understand English. This requirement includes:
  - (i) to the extent practicable, the translation of official documents typically provided to prisoners into a language understood by each prisoner who receives them;
  - (ii) staff who can interpret at all times in any language understood by a significant number of non-English-speaking prisoners; and
  - (iii) necessary interpretive services during disciplinary proceedings or other hearings, for processes by which a prisoner may lodge a complaint about staff misconduct or concerns about safety, and during provision of health care.

## **Standard 23-7.3 Religious freedom**

- (a) Correctional authorities should recognize and respect prisoners' freedom of religion.
  
- (b) Correctional authorities should permit prisoners to pursue lawful religious practices consistent with their orderly confinement and the security of the facility. Correctional facility policies should not significantly burden a prisoner's ability to engage in a practice motivated by a sincerely held religious belief, even by imposition of a facially neutral rule or policy, absent a compelling institutional interest and a determination that there are no less restrictive means of furthering that interest.

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**Standard 23-7.4 Prisoner organizations**

(c) As required by subdivision (b) of this Standard, correctional authorities should provide prisoners with diets of nutritious food consistent with their sincerely held religious beliefs. Prisoners should be entitled to observe special religious practices, including fasting and special dining hours.

(d) Correctional authorities should not require prisoners to engage in religious activities or programs. Prisoners should not receive as a direct result of their participation in a religious activity or program any financial or other significant benefit, including improved housing, additional out-of-cell time, extra sentencing credit for good conduct, or improved chances for early release, unless prisoners not participating in religious activities or programs are afforded comparable opportunities for such benefits.

(e) Correctional authorities should allow prisoners to follow religiously motivated modes of dress or appearance, including wearing religious clothing, headgear, jewelry, and other symbols, subject to the need to maintain security and to identify prisoners.

(f) Correctional officials should, to the extent reasonable, make resources and facilities available for religious purposes to all religious groups and prisoners following sincerely held religious beliefs within a correctional facility, and should not show favoritism to any religion.

**Standard 23-7.4 Prisoner organizations**

Prisoners should be permitted to form or join organizations whose purposes are lawful and consistent with legitimate penological objectives. Correctional officials should allow reasonable participation by members of the general public in authorized meetings or activities of such organizations, provided the safety of the public or the security or safety of persons within the facility are not thereby jeopardized.

**Standard 23-7.5 Communication and expression**

(a) Governmental authorities should allow prisoners to produce newspapers and other communications media for the dissemination of information, opinions, and other material of interest, and to distribute such media to the prisoner population and to the general public. To the extent practicable, funding, space, and institutional support should be provided for such efforts, and prisoners should be allowed to establish and operate independently-funded publications.

(b) Correctional officials should be permitted to require that prior to publication of an internal newspaper all material be submitted for review by a designated official, and to prohibit the publication or dissemination of material that is obscene or that constitutes a substantial threat to institutional security or order or to the safety of any

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**Standard 23-7.6 Personal appearance**

person. Correctional authorities should be permitted to censor material if it could be censored in publications sent to prisoners through the mail. Officials should provide a clear rationale in writing for any censorship decision, and should afford prisoners a timely opportunity to appeal the decision to a correctional administrator.

(c) Subject to the restrictions in Standard 23-8.6, correctional authorities should allow prisoners to produce works of artistic expression and to submit for publication books, articles, creative writing, art, or other contributions to media outside the facility under their own names.

(d) Correctional authorities should not subject prisoners to retaliation or disciplinary action based on their constitutionally protected communication and expression.

## **Standard 23-7.6 Personal appearance**

Correctional authorities should allow prisoners a reasonable choice in the selection of their own hair styles and personal grooming, subject to the need to identify prisoners and to maintain security and appropriate hygienic standards.

## **Standard 23-7.7 Records and confidentiality**

(a) Where consistent with applicable law, correctional authorities should be permitted to release without a prisoner's consent basic identifying information about the prisoner and information about the prisoner's crime of conviction, sentence, place of incarceration, and release date. All other information should be disclosed only upon the prisoner's written consent unless:

- (i) a government official specifies in writing the particular information desired, the official's agency is authorized by law to request that information, and the disclosure of the information is appropriately limited to protect the prisoner's privacy;
- (ii) the material is sought only for statistical, research, or reporting purposes and is not in a form containing the prisoner's name, number, symbol, or other information that might identify the prisoner;
- (iii) the disclosure is made pursuant to a valid court order or subpoena, or is otherwise required by law; or
- (iv) the prisoner is dead, and disclosure is authorized by the prisoner's next of kin or by the administrator of the prisoner's estate if one has been appointed.

(b) A correctional agency should allow a prisoner to examine and copy information in the prisoner's file, challenge its accuracy, and request its amendment. Correctional officials should be permitted to withhold:

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**Standard 23-7.8 Searches of facilities**

- (i) information that constitutes diagnostic opinion that might disrupt the prisoner's rehabilitation;
- (ii) sources of information obtained upon a promise of confidentiality, including as much of the information itself as risks disclosing the source;
- (iii) information that, if disclosed, might result in harm, physical or otherwise, to any person; and
- (iv) any other information reasonably believed to jeopardize institutional security if disclosed.

(c) Information given by a prisoner to any employee of the correctional authority in a designated counseling relationship under a representation of confidentiality should be privileged, except if the information concerns a contemplated crime or disclosure is required by law. Exceptions to confidentiality should be explained to a prisoner prior to any conversation or course of counseling in which confidentiality is promised, explicitly or implicitly.

**Standard 23-7.8 Searches of facilities**

(a) Correctional authorities should conduct all searches of prisoner living quarters and belongings so as to minimize damage to or disorganization of prisoner property and unnecessary invasions of privacy. When practicable and consistent with security, a prisoner should be permitted to observe any search of personal property belonging to that prisoner. Correctional authorities should not conduct searches in order to harass or retaliate against prisoners individually or as a group.

(b) When practicable, correctional authorities should prevent prisoners from observing searches and shakedowns of other prisoners' cells and property.

(c) A record should be kept of all facility searches, including documentation of any contraband that is found. The record should identify the circumstances of the search, the persons conducting the search, any staff who are witnesses, and any confiscated materials. When any property is confiscated, the prisoner should be given written documentation of this information.

**Standard 23-7.9 Searches of prisoners' bodies**

(a) In conducting a search of a prisoner's body, correctional authorities should strive to preserve the privacy and dignity of the prisoner. Correctional authorities should use the least intrusive appropriate means to search a prisoner. Searches of prisoners' bodies should follow a written protocol that implements this Standard.

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*Standard 23-7.9 Searches of prisoners' bodies*

(b) Except in exigent situations, a search of a prisoner's body, including a pat-down search or a visual search of the prisoner's private bodily areas, should be conducted by correctional staff of the same gender as the prisoner.

(c) Pat-down searches and other clothed body searches should be brief and avoid unnecessary force, embarrassment, and indignity to the prisoner.

(d) Visual searches of a prisoner's private bodily areas, whether or not inspection includes the prisoner's body cavities, should:

- (i) be conducted only by trained personnel in a private place out of the sight of other prisoners and of staff not involved in the search, except that a prisoner should be permitted to request that more than one staff member be present; and
- (ii) be permitted only upon individualized reasonable suspicion that the prisoner is carrying contraband, unless the prisoner has recently had an opportunity to obtain contraband, as upon admission to the facility, upon return from outside the facility or a work assignment in which the prisoner has had access to materials that could present a security risk to the facility, after a contact visit, or when the prisoner has otherwise had contact with a member of the general public; provided that a strip search should not be permitted without individualized reasonable suspicion when the prisoner is an arrestee charged with a minor offense not involving drugs or violence and the proposed strip search is upon the prisoner's admission to a correctional facility or before the prisoner's placement in a housing unit.

(e) Any examination of a transgender prisoner to determine that prisoner's genital status should be performed in private by a qualified medical professional, and only if the prisoner's genital status is unknown to the correctional agency.

(f) Except as required by exigent circumstances, a digital or instrumental search of the anal or vaginal cavity of a prisoner should be conducted only pursuant to a court order. Any such search should be conducted by a trained health care professional who does not have a provider-patient relationship with the prisoner, and should be conducted in a private area devoted to the provision of medical care and out of the sight of others, except that a prisoner should be permitted to request that more than one staff member be present.

(g) A record should be kept documenting any digital or instrumental anal or vaginal cavity search and any other body search in which property is confiscated. The record should identify the circumstances of the search, the persons who conducted the search, any staff who are witnesses, and any confiscated materials. The prisoner should be given written documentation of this information.

**Standard 23-7.10 Cross-gender supervision**

Correctional authorities should employ strategies and devices to allow correctional staff of the opposite gender to a prisoner to supervise the prisoner without observing the prisoner's private bodily areas. Any visual surveillance and supervision of a prisoner who is undergoing an intimate medical procedure should be conducted by correctional officers of the same gender as the prisoner. At all times within a correctional facility or during transport, at least one staff member of the same gender as supervised prisoners should share control of the prisoners.

**Standard 23-7.11 Prisoners as subjects of behavioral or biomedical research**

(a) Subject to the provisions of this Standard, prisoners should not be prohibited from participating in therapeutic behavioral or biomedical research if the potential benefits to prisoners outweigh the risks involved. For biomedical research that poses only a minimal risk to its participants or for behavioral research, prisoner participation should be allowed only if the research offers potential benefits to prisoners either individually or as a class. For biomedical research that poses more than a minimal risk to its participants, prisoner participation should be allowed only if the research offers potential benefits to its participants, and only if it has been determined to be safe for them. Except in unusual circumstances, such as a study of a condition that is solely or almost solely found among incarcerated populations, at least half the subjects involved in any behavioral or biomedical research in which prisoner participation is sought should be non-prisoners. No prisoner should receive preferential treatment, including improved living or work conditions or an improved likelihood of early release, in exchange for participation in behavioral or biomedical research, unless the purpose of the research is to evaluate the outcomes associated with such preferential treatment.

(b) Adequate safeguards and oversight procedures should be established for behavioral or biomedical research involving prisoners, including:

- (i) Prior to implementation, all aspects of the research program, including design, planning, and implementation, should be reviewed and approved, disapproved, or modified as necessary by an established institutional review board that complies with applicable law and that includes a medical ethicist and a prisoners' advocate.
- (ii) Research studies should not be the sole avenue for prisoners to receive standard treatment for any medical or mental health condition.
- (iii) The institutional review board should ensure that mechanisms exist to closely monitor the progress of the study to detect and address adverse events or unanticipated problems. Correctional staff, health care staff, and the researchers should promptly report all

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- adverse events involving prisoner study subjects to the institutional review board's chair and the prisoners' advocate.
- (iv) Provision should be made for appropriate health care for adverse medical or mental health conditions or reactions resulting from participation.
  - (v) No prisoner should be allowed to participate in behavioral or biomedical research unless that prisoner has given voluntary and informed consent in writing in accordance with an approved protocol which requires that the prisoner be informed and express understanding of:
    - A. the likely risks, including possible side effects, of any procedure or medication;
    - B. the likelihood and degree of improvement, remission, control, or cure resulting from any procedure or medication;
    - C. the uncertainty of the benefits and hazards of any procedure or medication and the reasonable alternatives;
    - D. the fact that a decision to participate or to decline participation will not affect the conditions of the prisoner's confinement;
    - E. the ability to withdraw from the study at any time without adverse consequences unrelated to any physical or psychological results of such withdrawal; and
    - F. the contact information for a person to whom questions about the study can be posed and problems reported.
  - (vi) All consent forms should be reviewed and approved by the institutional review board before they are presented to the prisoner.

## **PART VIII: REHABILITATION AND REINTEGRATION**

### **Standard 23-8.1 Location of facilities**

Governmental authorities should strive to locate correctional facilities near the population centers from which the bulk of their prisoners are drawn, and in communities where there are resources to supplement treatment programs for prisoners and to provide staff for security, programming, and treatment.

### **Standard 23-8.2 Rehabilitative programs**

(a) For the duration of each prisoner's confinement, the prisoner—including a prisoner in long-term segregated housing or incarcerated for a term of life imprisonment—should be engaged in constructive activities that provide opportunities to develop social and technical skills, prevent idleness and mental deterioration, and prepare the prisoner for eventual release. Correctional authorities should begin to plan for each prisoner's eventual release and reintegration into the community from the time of that prisoner's admission into the correctional system and facility.

(b) After consultation with each prisoner, correctional authorities should develop an individualized programming plan for the prisoner, in accordance with which correctional authorities should give each prisoner access to appropriate programs, including educational opportunities, mental health and substance abuse treatment and counseling, vocational and job readiness training, personal financial responsibility training, parenting skills, relationship skills, cognitive or behavioral programming, and other programs designed to promote good behavior in the facility and reduce recidivism.

(c) Correctional authorities should afford every prisoner an opportunity to obtain a foundation in basic literacy, numeracy, and vocational skills. Correctional authorities should offer prisoners expected to be incarcerated for more than six months additional educational programs designed to meet those prisoners' individual needs. Correctional authorities should offer high school equivalency classes, post-secondary education, apprenticeships, and similar programs designed to facilitate reentry into the workforce upon release. While on-site programs are preferred, correctional authorities without resources for on-site classes should offer access to correspondence courses, online educational opportunities, or programs conducted by outside agencies. Correctional authorities should actively encourage prisoner participation in appropriate educational programs.

(d) A correctional facility should have or provide adequate access to a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books, current newspapers, and other periodicals. Prisoners should also have regular access to a variety of broadcast media to enable them to remain informed about public affairs.

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**Standard 23-8.3 Restorative justice**

(e) Correctional officials should provide programming and activities appropriate for specific types of prisoners, including female prisoners, prisoners who face language or communication barriers or have physical or mental disabilities, prisoners who are under the age of eighteen or geriatric, and prisoners who are serving long sentences or are assigned to segregated housing for extended periods of time.

(f) Correctional authorities should permit each prisoner to take full advantage of available opportunities to earn credit toward the prisoner's sentence through participation in work, education, treatment, and other programming.

## **Standard 23-8.3 Restorative justice**

(a) Governmental and correctional authorities should facilitate programs that allow crime victims to speak to groups of prisoners, and, at the request of a crime victim and with the consent of the prisoner, appropriate meetings or mediation between prisoners and their victims.

(b) Consistent with security needs, correctional officials should provide opportunities for prisoners to contribute to the community through volunteer activities.

## **Standard 23-8.4 Work programs**

(a) Each sentenced prisoner should be employed substantially full-time unless there has been an individualized determination that no work assignment for that prisoner is consistent with security and safety. Substantial educational or rehabilitative programs can substitute for employment of the same duration. Whenever practicable, pretrial detainees should also be offered opportunities to work. Correctional authorities should be permitted to assign prisoners to community service; to jobs in prison industry programs; or to jobs useful for the operation of the facility, including cleaning, food service, maintenance, and agricultural programs. Prisoners' work assignments, including community service assignments, should teach vocational skills that will assist them in finding employment upon release, should instill a work ethic, and should respect prisoners' human dignity. To promote occupational training for prisoners, work release programs should be used when appropriate.

(b) Prisoners' job assignments should not discriminate on the basis of race, national origin, ethnicity, religion, or disability. Correctional authorities should make reasonable accommodations for religion and disability with respect to job requirements and sites. Correctional authorities should provide female prisoners job opportunities reasonably similar in nature and scope to those provided male prisoners.

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**Standard 23-8.5 Visiting**

(c) Prisoners should work under health and safety conditions substantially the same as those that prevail in similar types of employment in the free community, except to the extent that security requires otherwise. No prisoner should be shackled during a work assignment except after an individualized determination that security requires otherwise. Prisoners should not be required to work more than 40 hours each week, and should be afforded at least one rest day each week and sufficient time apart from work for education and other activities.

(d) Prisoners employed by a correctional facility should be compensated in order to create incentives that encourage work habits and attitudes suitable for post-release employment.

(e) Correctional officials should be permitted to contract with private enterprises to establish industrial and service programs to employ prisoners within a correctional facility, and goods and services produced should be permitted to freely enter interstate commerce. If such enterprises are for-profit firms, prisoners should be paid at least minimum wage for their work.

**Standard 23-8.5 Visiting**

(a) To the extent practicable, a prisoner should be assigned to a facility located within a reasonable distance of the prisoner's family or usual residence in order to promote regular visitation by family members and to enhance the likelihood of successful reintegration.

(b) Correctional officials should implement visitation policies that assist prisoners in maintaining and developing healthy family relationships by:

- (i) providing sufficient and appropriate space and facilities for visiting;
- (ii) establishing reasonable visiting hours that are convenient and suitable for visitors, including time on weekends, evenings, and holidays; and
- (iii) implementing policies and programs that facilitate healthy interactions between prisoners and their families, including their minor children.

(c) Correctional authorities should treat all visitors respectfully and should accommodate their visits to the extent practicable, especially when they have traveled a significant distance. Prisoners should be allowed to receive any visitor not excluded by correctional officials for good cause. Visitors should not be excluded solely because of a prior criminal conviction, although correctional authorities should be permitted to exclude a visitor if exclusion is reasonable in light of the conduct underlying the visitor's conviction. Correctional authorities should be permitted to subject all visitors to nonintrusive types of body searches such as pat-down and metal-detector-aided searches, and to search property visitors bring inside a correctional facility.

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(d) Visiting periods should be of adequate length. Visits with counsel and clergy should not be counted as visiting time, and ordinarily should be unlimited in frequency. Pretrial detainees should be allowed visiting opportunities beyond those afforded convicted prisoners, subject only to reasonable institutional restrictions and physical plant constraints.

(e) For prisoners whose confinement extends more than [30 days], correctional authorities should allow contact visits between prisoners and their visitors, especially minor children, absent an individualized determination that a contact visit between a particular prisoner and a particular visitor poses a danger to a criminal investigation or trial, institutional security, or the safety of any person. If contact visits are precluded because of such an individualized determination, non-contact, in-person visiting opportunities should be allowed, absent an individualized determination that a non-contact visit between the prisoner and a particular visitor poses like dangers. Correctional officials should develop and promote other forms of communication between prisoners and their families, including video visitation, provided that such options are not a replacement for opportunities for in-person contact.

(f) Correctional officials should facilitate and promote visiting by providing visitors travel guidance, directions, and information about visiting hours, attire, and other rules. If public transportation to a correctional facility is not available, correctional officials should work with transportation authorities to facilitate the provision of such transportation.

(g) Governmental authorities should establish home furlough programs, giving due regard to institutional security and community safety, to enable prisoners to maintain and strengthen family and community ties. Correctional officials should allow a prisoner not receiving home furloughs to have extended visits with the prisoner's family in suitable settings, absent an individualized determination that such an extended visit would pose a threat to safety or security.

(h) When practicable, giving due regard to security, public safety, and budgetary constraints, correctional officials should authorize prisoners to leave a correctional facility for compelling humanitarian reasons such as a visit to a dying parent, spouse, or child, either under escort or alone.

**Standard 23-8.6 Written communications**

(a) Correctional authorities should allow prisoners to communicate as frequently as practicable in writing with their families, friends, and representatives of outside organizations, including media organizations. Indigent prisoners should be provided a reasonable amount of stationery and free postage or some reasonable alternative that permits them to maintain contact with people and organizations in the community. Correctional policies regarding electronic communication by prisoners should consider public safety, institutional security, and prisoners' interest in ready communication.

(b) Correctional authorities should allow prisoners to receive or access magazines, soft- or hard-cover books, newspapers, and other written materials, including documents printed from the Internet, subject to the restrictions in subdivisions (c) and (d) of this Standard.

(c) Correctional authorities should be permitted to monitor and restrict both outgoing and incoming written communications and materials to the extent necessary for maintenance of institutional order, safety, and security; prevention of criminal offenses; continuing criminal investigations; and protection of victims of crime. Correctional officials should be permitted to impose reasonable page limits and limitations on receipt of bound materials from sources other than their publisher, but should not require that items be mailed using particular rates or particular means of payment. Correctional officials should set forth any applicable restrictions in a written policy.

(d) Correctional authorities should be permitted to open and inspect an envelope, package, or container sent to or by a prisoner to determine if it contains contraband or other prohibited material, subject to the restrictions set forth in these Standards on inspection of mail to or from counsel.

(e) A prisoner should be informed if correctional authorities deny the prisoner permission to send or receive any publication or piece of correspondence and should be told the basis for the denial and afforded an opportunity to appeal the denial to an impartial correctional administrator. If a publication or piece of correspondence contains material in violation of the facility's written guidelines, correctional authorities should make reasonable efforts to deny only those segregable portions of the publication or correspondence that present concerns.

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*Standard 23-8.7 Access to telephones*

## **Standard 23-8.7 Access to telephones**

(a) Correctional authorities should afford prisoners a reasonable opportunity to maintain telephonic communication with people and organizations in the community, and a correctional facility should offer telephone services with an appropriate range of options at the lowest possible rate, taking into account security needs. Commissions and other revenue from telephone service should not subsidize non-telephone prison programs or other public expenses.

(b) Correctional authorities should provide prisoners with hearing or speech impairments ready access to telecommunications devices for the deaf or comparable equipment and to telephones with volume control, and should facilitate prisoners' telephonic communication with persons in the community who have such disabilities.

(c) Correctional authorities should be permitted to monitor or record telephonic communications subject to the restrictions set forth in these Standards relating to communications with counsel and confidential communications with external monitoring agencies. Correctional authorities should inform prisoners that their conversations may be monitored, and should not monitor or record conversations for purposes of harassment or retaliation.

## **Standard 23-8.8 Fees and financial obligations**

(a) Unless a court orders otherwise in a situation in which a prisoner possesses substantial assets, correctional authorities should not charge prisoners fees for any non-commensurate services provided them during the period of imprisonment, including their food or housing or incarceration itself, except that correctional authorities should be permitted to assess prisoners employed at or above minimum wage a reasonable portion of their wages in applicable fees.

(b) In imposing and enforcing financial obligations on prisoners, governmental authorities, including courts, should consider both the interest served by the imposition of the obligation and the cumulative effect of financial obligations on a prisoner's successful and law-abiding re-entry.

## **Standard 23-8.9 Transition to the community**

(a) Governmental officials should ensure that each sentenced prisoner confined for more than [6 months] spends a reasonable part of the final portion of the term of imprisonment under conditions that afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community. A correctional agency should provide community-based transitional facilities to assist in this reintegration process.

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(b) In the months prior to anticipated release of a sentenced prisoner confined for more than [6 months], correctional authorities should develop an individualized re-entry plan for the prisoner, which should take into account the individualized programming plan developed pursuant to Standard 23-8.2(b). In developing the re-entry plan, correctional authorities should involve any agency with supervisory authority over the prisoner in the community and, with the prisoner's permission, should invite involvement by the prisoner's family. Preparation for re-entry should include assistance in locating housing, identifying and finding job opportunities, developing a resume and learning interviewing skills, debt counseling, and developing or resuming healthy family relationships.

(c) Correctional authorities should provide each prisoner released to the community with a written health care discharge plan that identifies medical and mental health services available to the prisoner in the community. The plan should describe the course of treatment provided the prisoner in the facility and any medical, dental, or mental health problems that may need follow-up attention in the community.

(d) When a prisoner with ongoing medical or mental health care needs is released to the community, correctional authorities should make reasonable efforts to:

- (i) identify and arrange for community-based health care services, including substance abuse treatment; and
- (ii) ensure that all health care treatment and medications provided to the prisoner during the term of imprisonment will continue uninterrupted, including, if necessary, providing prescription medication or medical equipment for a brief period reasonably necessary to obtain access to health care services in the community; providing initial medically necessary transportation from the correctional facility to a community health care facility for continuing treatment; or otherwise addressing the prisoner's serious immediate post-release health care needs.

(e) Correctional authorities should provide each convicted prisoner being released to the community with:

- (i) specific information about when and how to contact any agency having supervisory responsibility for the prisoner in the community;
- (ii) general information about the collateral sanctions and disqualifications that may apply because of the prisoner's conviction, and where to get more details; and
- (iii) general information about the process for obtaining relief from such sanctions and disqualifications, and contact information for government or nonprofit organizations, if any, offering assistance to individuals seeking such relief.

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(f) Whenever possible, prisoners should be released from a correctional facility at a reasonable time of day. Each prisoner should have or be provided with transportation to the prisoner's reasonable destination and with contact information for all relevant community service providers. Upon release, each prisoner who was confined for more than [3 months] should possess or be provided with:

- (i) photographic identification sufficient to obtain lawful employment;
- (ii) clothing appropriate for the season;
- (iii) sufficient money or its equivalent necessary for maintenance during a brief period immediately following release; and
- (iv) a voter registration card or general instructions on how to register to vote, if eligible to vote upon release.

(g) When public safety and the interests of justice would not be compromised, governmental authorities should provide judicial and administrative mechanisms to accomplish the early release of prisoners in exceptional circumstances, such as terminal illness, permanent disability that substantially diminishes the ability of the prisoner to provide self-care within a correctional facility, or exigent family circumstances.

(h) Governmental authorities should implement policies that allow government benefits, including health benefits, to be restored to prisoners immediately upon release, and correctional officials should ensure that correctional authorities or community service providers assist prisoners—especially prisoners with mental disabilities or significant health care needs—in preparing and submitting appropriate benefits applications sufficiently in advance of their anticipated release date to meet this objective and facilitate continuity of care.

**PART IX: GRIEVANCES AND ACCESS TO COURTS**

**Standard 23-9.1 Grievance procedures**

(a) Correctional administrators and officials should authorize and encourage resolution of prisoners' complaints and requests on an informal basis whenever possible.

(b) Correctional officials should provide prisoners opportunities to make suggestions to improve correctional programs and conditions.

(c) Correctional administrators and officials should adopt a formal procedure for resolving specific prisoner grievances, including any complaint relating to the agency's or facility's policies, rules, practices, and procedures or the action of any correctional official or staff. Prisoners should be informed of this procedure pursuant to Standard 23-4.1, including any applicable timeframes or other bases for rejecting a grievance on procedural grounds.

(d) Correctional officials should minimize technical requirements for grievances and should allow prisoners to initiate the grievance process by describing briefly the nature of the complaint and the remedy sought. Grievances should be rejected as procedurally improper only for a reason stated in the written grievance policy made available to prisoners. If correctional officials elect to require use of a particular grievance form, correctional authorities should make forms and writing implements readily available and should allow a grievant to proceed without using the designated form if it was not readily available to that prisoner.

(e) A correctional agency's grievance procedure should be designed to instill the confidence of prisoners and correctional authorities in the effectiveness of the process, and its success in this regard should be periodically evaluated. Procedural protections for prisoners should include, at a minimum:

- (i) access for all prisoners, with safeguards against reprisal;
- (ii) methods for confidential submission of grievances;
- (iii) reasonable filing and appeal deadlines;
- (iv) acceptance of grievances submitted or appealed outside the reasonable deadlines, if a prisoner has a legitimate reason for delay and that delay has not significantly impaired the agency's ability to resolve the grievance;
- (v) written responses to all grievances, including those deemed procedurally improper, stating the reasons for the decision, within prescribed, reasonable time limits;
- (vi) shortened time limits for responses to emergencies;
- (vii) an appeal process that allows no more than [70 days], cumulatively, for official response(s) to all levels of appeal except if a correctional official extends the period upon an individualized finding of special circumstances;

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- (viii) treatment of any grievance or appeal as denied, for purposes of the prisoner's subsequent appeal or review, if the prisoner is not provided a written response within the relevant time limit; and
- (ix) an appropriate individual and, when appropriate, systemic remedy if the grievance is determined to be well-founded.

## **Standard 23-9.2 Access to the judicial process**

- (a) Governmental officials should assure prisoners full access to the judicial process.
- (b) Prisoners' access to the judicial process should not be restricted by the nature of the action or the relief sought, the phase of litigation involved, or the likelihood of success of the action, except if like restrictions, including filing fees, are imposed on non-prisoners. Prisoners should be entitled to present any judicially cognizable issue, including:
  - (i) challenges to the legality of their conviction, confinement, extradition, deportation, or removal;
  - (ii) assertions of any rights protected by state or federal constitution, statute, administrative provision, treaty, or common law;
  - (iii) civil legal problems, including those related to family law; and
  - (iv) assertions of a defense to any action brought against them.
- (c) The handbook required by Standard 23-4.1 should advise prisoners about the potential legal consequences of a failure to use the institutional grievance procedures.
- (d) A prisoner who files a lawsuit with respect to prison conditions but has not exhausted administrative remedies at the time the lawsuit is filed should be permitted to pursue the claim through the grievance process, with the lawsuit stayed for up to [90 days] pending the administrative processing of the claim, after which a prisoner who filed a grievance during the period of the stay should be allowed to proceed with the lawsuit without any procedural bar.
- (e) Upon request by a court, correctional authorities should facilitate a prisoner's participation—in person or using telecommunications technology—in legal proceedings.
- (f) A prisoner should be allowed to prepare, receive, and send legal documents to courts, counsel, and public officials. Correctional officials should not unreasonably delay the delivery of these legal documents.
- (g) Courts should be permitted to implement rules to protect defendants and courts from vexatious litigation, but governmental authorities should not retaliate against a prisoner who brings an action in court or otherwise exercises a legal right.

**Standard 23-9.3 Judicial review of prisoner complaints**

- (a) Judicial procedures should be available to facilitate timely resolution of disputes involving the legality, duration, or conditions of confinement.
- (b) When determining whether a pleading or other court filing has stated a legally cognizable claim or complied with other requirements, courts should take into account the challenges faced by pro se prisoners.
- (c) Prisoners should not be required to demonstrate a physical injury in order to recover for mental or emotional injuries caused by cruel and unusual punishment or other illegal conduct.
- (d) Courts should have the same equitable authority in cases involving challenges to conditions of confinement as in other civil rights cases.

**Standard 23-9.4 Access to legal and consular services**

- (a) Correctional authorities should facilitate prisoners' access to counsel. The provisions of this Standard applicable to counsel apply equally to consular officials for prisoners who are not United States citizens.
- (b) A prisoner with a criminal charge or removal action pending should be housed in a correctional facility sufficiently near the courthouse where the case will be heard that the preparation of the prisoner's defense is not unreasonably impaired.
- (c) Correctional authorities should implement policies and practices to enable a prisoner's confidential contact and communication with counsel that incorporate the following provisions:
  - (i) For letters or other documents sent or passed between counsel and a prisoner:
    - A. correctional authorities should not read the letter or document, and should search only for physical contraband; and
    - B. correctional authorities should conduct such a search only in the presence of the prisoner to or from whom the letter or document is addressed.
  - (ii) For meetings between counsel and a prisoner:
    - A. absent an individualized finding that security requires otherwise, counsel should be allowed to have direct contact with a prisoner who is a client, prospective client, or witness, and should not be required to communicate with such a prisoner through a glass or other barrier;

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- B. counsel should be allowed to meet with a prisoner in a setting where their conversation cannot be overheard by staff or other prisoners;
  - C. meetings or conversations between counsel and a prisoner should not be audio recorded by correctional authorities;
  - D. during a meeting with a prisoner, counsel should be allowed to pass previously searched papers to and from the prisoner without intermediate handling of those papers by correctional authorities;
  - E. correctional authorities should be allowed to search a prisoner before and after such a meeting for physical contraband, including by performing a visual search of a prisoner's private bodily areas that complies with Standard 23-7.9;
  - F. rules governing counsel visits should be as flexible as practicable in allowing counsel adequate time to meet with a prisoner who is a client, prospective client, or witness, including such a prisoner who is for any reason in a segregated housing area, and should allow meetings to occur at any reasonable time of day or day of the week; and
  - G. the time a prisoner spends meeting with counsel should not count as personal visiting time.
- (iii) For telephonic contact between counsel and their clients:
- A. correctional officials should implement procedures to enable confidential telephonic contact between counsel and a prisoner who is a client, prospective client, or witness, subject to reasonable regulations, and should not monitor or record properly placed telephone conversations between counsel and such a prisoner; and
  - B. the time a prisoner spends speaking on the telephone with counsel should not count against any applicable maximum telephone time.

(d) The right of access to counsel described in subdivisions (a) and (c) of this Standard should apply in connection with all legal matters, regardless of the type or subject matter of the representation or whether litigation is pending or the representation has commenced.

(e) Governmental authorities should allow a prisoner to engage counsel of the prisoner's choice when the prisoner is able to do so.

(f) Rules governing attorneys fees and their recovery should be the same for prisoners as for non-prisoners.

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(g) Government legal services should be available to prisoners to the same extent they are available to non-prisoners. Government-funded legal services organizations should be permitted to provide legal services to prisoners without limitation as to the subject matter or the nature of the relief sought. The relationship between a prisoner and a person providing legal assistance under this subdivision should be governed by applicable ethical rules protecting the attorney-client relationship.

**Standard 23-9.5 Access to legal materials and information**

(a) A correctional facility should provide prisoners reasonable access to updated legal research resources relevant to prisoners' common legal needs, including an appropriate collection of primary legal materials, secondary resources such as treatises and self-help manuals, applicable court rules, and legal forms. Access to these legal resources should be provided either in a law library or in electronic form, and should be available even to those prisoners who have access to legal services. Correctional authorities should be permitted to regulate the time, place, and manner of prisoners' access to these resources for purposes of facility security and scheduling, but prisoners should have regular and sufficient access, without interference with the prisoners' ability to eat meals, work, receive health care, receive visits, or attend required treatment or educational programming. Prisoners who are unable to access library resources because of housing restrictions, language or reading skills, or for other reasons, should have access to an effective alternative to such access, including the provision of counsel, or of prisoners or non-prisoners trained in the law.

(b) Prison officials should provide programs for the education and training of prisoners who can help other prisoners with legal matters.

(c) Correctional authorities should allow prisoners to purchase or, if they are indigent, to receive without charge materials to support their communications with courts, attorneys, and public officials. These materials should include paper, writing implements, envelopes, and stamps. Correctional authorities should provide access to copying services, for which a reasonable fee should be permitted, and should provide prisoners with access to typewriters or word processing equipment.

(d) Correctional authorities should allow prisoners to acquire personal law books and other legal research material and to prepare and retain legal documents. Regulations relating to the storage of legal material in personal quarters or other areas should be only for purposes of safety or security and should not unreasonably interfere with access to or use of these materials.

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(e) Correctional authorities should not read, censor, alter, or destroy a prisoner's legal materials. Correctional authorities should be permitted to examine legal materials received or retained by a prisoner for physical contraband. If correctional authorities have a reasonable suspicion that a prisoner's legal materials contain non-legal material that violates written policy, they should be permitted to read the materials only to the extent necessary to determine whether they are legal in nature.

**PART X: ADMINISTRATION AND STAFFING**

**Standard 23-10.1 Professionalism**

(a) A correctional agency should have a clear written statement of its mission and core values. Established professional standards should serve as the basis for an agency's operating policies and procedures.

(b) Correctional administrators and officials should foster an institutional culture that helps maintain a safe and secure facility, is conducive to humane and respectful treatment of prisoners, supports adherence to professional standards, and encourages ethical conduct.

(c) To effectuate rehabilitative goals, correctional staff members should have rehabilitative responsibilities in addition to custodial functions. In their interactions with prisoners, they should model fair, respectful, and constructive behavior; engage in preventive problem-solving; and rely upon effective communication.

(d) If a correctional staff member discovers a breach of security; a threat to prisoner, staff, or public safety; or some other actual or threatened harm to a prisoner, staff, or the public, the correctional staff member should report that discovery promptly to a supervisor. A staff member should report any information relating to corrupt or criminal conduct by other staff directly to the chief executive officer of the facility or to an independent government official with responsibility to investigate correctional misconduct, and should provide any investigator with full and candid information about observed misconduct.

**Standard 23-10.2 Personnel policy and practice**

(a) A correctional agency and facility should be appropriately staffed to promote safety for all staff and prisoners and allow the full operation of all programs and services and a reasonable work schedule for each staff member. Salaries and benefits should be sufficient to attract and retain qualified staff.

(b) Correctional administrators and officials should implement recruitment and selection processes that will ensure that staff are professionally qualified, psychologically fit to work with prisoners, and certified or licensed as appropriate.

(c) Correctional administrators and officials should strive to employ a work force at each correctional facility that reasonably reflects the racial and ethnic demographics of the prisoner population by engaging in outreach and recruiting efforts to increase the pool of qualified applicants from underrepresented groups and by implementing appropriate retention policies. Each correctional facility should employ sufficient numbers of men and women to comply with Standard 23-7.10.

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**Standard 23-10.3 Training**

(d) Correctional staff should be provided with safe and healthful working conditions. They should have opportunities to make suggestions and express concerns, develop innovative practices, and contribute to the agency's institutional planning process.

## **Standard 23-10.3 Training**

(a) For all staff, correctional administrators and officials should integrate training relating to the mission and core values of the correctional agency with technical training.

(b) Correctional administrators should require staff to participate in a comprehensive pre-service training program, a regular program of in-service training, and specialized training when appropriate. Training programs should equip staff to:

- (i) maintain order while treating prisoners with respect, and communicate effectively with prisoners;
- (ii) follow security requirements, conduct searches, and use technology appropriately;
- (iii) use non-force techniques for avoiding and resolving conflicts, and comply with the agency's policy on use of force;
- (iv) identify and respond to medical and mental health emergencies, recognize and report the signs and symptoms of mental disability and suicide risk, and secure appropriate medical and mental health services;
- (v) detect and respond to signs of threatened and actual physical and sexual assault and sexual pressure against prisoners;
- (vi) avoid inappropriate relationships, including sexual contact, with prisoners;
- (vii) understand the legal rights of prisoners relevant to their professional duties;
- (viii) facilitate prisoner use of the grievance process, and understand that process's benefits for correctional staff and facilities;
- (ix) maintain appropriate records, including clear and accurate reports; and
- (x) perform the above functions in a way that promotes the health and safety of staff.

(c) Correctional administrators and officials should provide specialized training to staff who work with specific types of prisoners to address the physical, social, and psychological needs of such prisoners, including female prisoners, prisoners who face language or communication barriers or have physical or mental disabilities, prisoners who are under the age of eighteen or geriatric, and prisoners who are serving long sentences or are assigned to segregated housing for extended periods of time.

*Treatment of Prisoners Standards for consideration by the ABA House of Delegates (Feb. 2010)*  
**Standard 23-10.4 Accountability of staff**

(d) Correctional administrators and officials should provide training to volunteers about how to avoid and report inappropriate conduct.

**Standard 23-10.4 Accountability of staff**

(a) A correctional agency should have clear rules of conduct for staff and guidelines for disciplinary sanctions, including progressive sanctions for repeated misconduct involving prisoners. The chief executive of the facility or a higher-ranking correctional administrator should receive reports of all cases in which staff are found to have engaged in misconduct involving prisoners and should have final responsibility for determining the appropriate sanction.

(b) If correctional officials determine that an allegation of serious misconduct involving a prisoner is credible, the staff member who is the subject of the allegation should be promptly removed from a position of trust and placed either on administrative leave or in a position that does not involve contact with prisoners or supervision of others who have contact with prisoners, pending resolution of the matter. A final determination of serious misconduct involving a prisoner should result in termination of the employment of the staff member and should be reported to relevant law enforcement and licensing agencies.

(c) Correctional officials should require all correctional staff arrested or charged with a misdemeanor or felony to report that fact promptly.

**Standard 23-10.5 Privately operated correctional facilities**

(a) Contracts with private corporations or other private entities for the operation of a secure correctional facility should be disfavored. Governmental authorities should make every effort to house all prisoners in need of secure confinement in publicly operated correctional facilities.

(b) Governmental authorities should not enter into a contract with a private entity for the operation of any correctional facility, secure or not, unless it can be demonstrated that the contract will result either in improved performance or in substantial cost savings, considering both routine and emergency costs, with no diminution in performance.

(c) A jurisdiction that enters into a contract with a private entity for the operation of a correctional facility should maintain the ability to house its prisoners in other facilities if termination of the contract for noncompliance proves necessary. Each jurisdiction should develop a comprehensive plan, in advance of entering into any contract, to ensure that this ability remains.

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*Standard 23-10.5 Privately operated correctional facilities*

(d) Laws, policies, administrative rules, standards, and reporting requirements applicable to publicly operated correctional facilities of similar security levels in the contracting jurisdiction, including those applicable to staff qualifications and training, freedom of information demands and disclosures, and external oversight, should apply in substance to a privately operated facility either as a matter of statutory law or as incorporated contract terms.

(e) Core correctional functions of determining the length and location of a prisoner's confinement, including decisions relating to prisoner discipline, transfer, length of imprisonment, and temporary or permanent release, should never be delegated to a private entity.

(f) Any contract by which a private entity operates a correctional facility should include terms that comport with the following restrictions:

- (i) The contract should state its duration and scope positively and definitely; incorporate professional standards and require the provider to meet these Standards; incorporate terms governing the appropriate treatment of prisoners, conditions of facilities, and provisions for oversight; and provide a continuum of sanctions for noncompliance including immediate termination of the contract on terms with no financial detriment for the government agency.
- (ii) If a contractor is delegated the authority to use force, the scope of such a delegation should be specified in detail, and should not exceed the authority granted by agency policy to correctional authorities in similar facilities with similar prisoner populations.
- (iii) If a contractor is delegated the authority to classify prisoners, the classification system and instrument should be approved and individual classification decisions reviewed by the contracting agency.
- (iv) The contract should facilitate the contracting agency's on- and off-site monitoring by giving the contracting agency access to all the information it needs to carry out its oversight responsibilities, including access to all files and records, and to all areas of the facility and staff and prisoners at all times.
- (v) The private provider should assume all liability for the operation of the facility, should be prohibited from asserting immunity defenses, and should provide adequate insurance coverage, including insurance for civil rights claims.

(g) Any jurisdiction that enters into a contract with a private corporation or entity for the operation of a correctional facility should implement procedures to monitor compliance with that contract systematically, regularly, and using a variety of on- and off-site monitoring techniques, including reviewing files and records, physically inspecting the facility, and interviewing staff and prisoners.

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*Standard 23-10.5 Privately operated correctional facilities*

(h) Except in an emergency, such as a natural disaster, no prisoner of a state or local correctional agency should be sent out of state to a private facility pursuant to a contract unless there has been an individualized determination that security of the system or the prisoner requires it, or that the prisoner and the prisoner's individualized programming plan and individualized re-entry plan will not be significantly adversely affected by the move. A contracting agency should make provision for on-site monitoring of each location to which prisoners are sent.

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*Standard 23-11.1 Internal accountability*

## **PART XI: ACCOUNTABILITY AND OVERSIGHT**

### **Standard 23-11.1 Internal accountability**

- (a) A correctional agency should establish an independent internal audit unit to conduct regular performance auditing and to advise correctional administrators on compliance with established performance indicators, standards, policies, and other internal controls.
- (b) A correctional agency should designate an internal unit, answerable to the head of the agency, to be responsible for investigating allegations of serious staff misconduct, including misconduct against prisoners, and for referring appropriate cases for administrative disciplinary measures or criminal prosecution.
- (c) If a correctional agency contracts for provision of any services or programs, it should ensure that the contract requires the provider to comply with these Standards, including Standard 23-9.1 governing grievances. The agency should implement a system to monitor compliance with the contract, and to hold the contracted provider accountable for any deficiencies.
- (d) Correctional administrators and officials should seek accreditation of their facilities and certification of staff from national organizations whose standards reflect best practices in corrections or in correctional sub-specialties.
- (e) Correctional administrators and officials should regularly review use of force reports, serious incident reports, and grievances, and take any necessary remedial action to address systemic problems.
- (f) Correctional administrators should routinely collect, analyze, and publish statistical information on agency operations including security incidents, sexual assaults, prisoner grievances, uses of force, health and safety, spending on programs and services, program participation and outcomes, staffing, and employee discipline.
- (g) Correctional administrators and officials should evaluate short and long-term outcomes of programs provided to prisoners and, where permitted by applicable law, should make the evaluations and any underlying aggregated data available upon request to researchers, investigators, and media representatives.
- (h) Correctional agencies should work together to develop uniform national definitions and methods of defining, collecting, and reporting accurate and complete data.
- (i) Governmental authorities should not exempt correctional agencies from their jurisdiction's Administrative Procedure Act, Freedom of Information Act, or Public Records Act.

**Standard 23-11.2 External regulation and investigation**

(a) Independent governmental bodies responsible for such matters as fire safety, sanitation, environmental quality, food safety, education, and health should regulate, inspect, and enforce regulations in a correctional facility. A correctional facility should be subject to the same enforcement penalties and procedures, including abatement procedures for noncompliance, as are applicable to other institutions.

(b) Governmental authorities should authorize and fund an official or officials independent of each correctional agency to investigate the acts of correctional authorities, allegations of mistreatment of prisoners, and complaints about conditions in correctional facilities, including complaints by prisoners, their families, and members of the community, and to refer appropriate cases for administrative disciplinary measures or criminal prosecutions.

(c) When federal or state law authorizes a governmental or non-governmental agency or organization to conduct an investigation relating to a correctional facility, correctional officials should allow that agency or organization convenient and complete access to the facility and should cooperate fully in the investigation.

(d) When a prisoner dies, correctional officials should promptly notify the jurisdiction's medical examiner of the death and its circumstances; the medical examiner should decide whether an autopsy should be conducted. Where authorized by law, a correctional official should also be permitted to order an autopsy.

(e) Correctional officials should encourage and accommodate visits by judges and lawmakers and by members of faith-based groups, the business community, institutions of higher learning, and other groups interested in correctional issues.

**Standard 23-11.3 External monitoring and inspection**

(a) Governmental authorities should authorize and fund a governmental agency independent of each jurisdiction's correctional agency to conduct regular monitoring and inspection of the correctional facilities in that jurisdiction and to issue timely public reports about conditions and practices in those facilities. This agency, which should be permitted to be the same entity responsible for investigations conducted pursuant to Standard 23-11.2(b), should anticipate and detect systemic problems affecting prisoners, monitor issues of continuing concern, identify best practices within facilities, and make recommendations for improvement.

(b) Monitoring teams should possess expertise in a wide variety of disciplines relevant to correctional agencies. They should receive authority to:

- (i) examine every part of every facility;
- (ii) visit without prior notice;
- (iii) conduct confidential interviews with prisoners and staff; and

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**Standard 23-11.4 Legislative oversight and accountability**

(iv) review all records, except that special procedures may be implemented for highly confidential information.

(c) A correctional agency should be required to respond in a public document to the findings of the monitoring agency, to develop an action plan to address identified problems, and to periodically document compliance with recommendations or explain noncompliance; however, if security requires, the public document should be permitted to be supplemented by a confidential one.

(d) The monitoring agency should continue to assess and report on previously identified problems and the progress made in resolving them until the problems are resolved.

## **Standard 23-11.4 Legislative oversight and accountability**

(a) Governmental authorities should enact legislation to implement and fund compliance with these Standards.

(b) Legislative bodies should exercise vigorous oversight of corrections, including conducting regular hearings and visits. Correctional authorities should allow legislators who sit on correctional oversight committees to speak privately with staff and prisoners.

(c) Each state legislature should establish an authority to promulgate and enforce standards applicable to jails and local detention facilities in the state.

(d) Governmental authorities should prepare a financial and correctional impact statement to accompany any proposed criminal justice legislation that would affect the size, demographics, or requirements of the jurisdiction's prison and jail populations, and should periodically assess the extent to which criminal justice legislation is achieving positive results.

## **Standard 23-11.5 Media access to correctional facilities and prisoners**

(a) Correctional administrators should develop agency media access policies and make them readily available to the public in written form. Correctional authorities should generally accommodate professionally accredited journalists who request permission to visit a facility or a prisoner, and should provide a process for expeditious appeal if a request is denied.

(b) Prisoners should have the right to refuse requests for interviews and should be notified of that right and given an opportunity to consult with counsel, if they have counsel, prior to an interview.

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*Standard 23-11.5 Media access to correctional facilities and prisoners*

(c) Correctional authorities should allow professionally accredited journalists reasonable use of notebooks, writing implements, video and still cameras, and audio recorders.

(d) The time, place, and manner of media visits should be reasonably regulated to preserve the privacy and dignity of prisoners and the security and order of the facility.

(e) Correctional authorities should not retaliate against a prisoner for that prisoner's lawful communication with a member of the media.

**Appendix: Cross-References to 1981 Legal Status of Prisoner Standards**

[http://www.abanet.org/crimjust/standards/prisoners\\_status.html](http://www.abanet.org/crimjust/standards/prisoners_status.html)

Section	Title	1981 analogue
23-1.0	Definitions	Glossary of Terms
<b>PART I: GENERAL PRINCIPLES</b>		
23-1.1	General principles governing imprisonment	1.1
23-1.2	Treatment of prisoners	6.9, 6.14
<b>PART II: INTAKE AND CLASSIFICATION</b>		
23-2.1	Intake screening	
23-2.2	Classification system	3.4
23-2.3	Classification procedures	3.4
23-2.4	Special classification issues	6.14
23-2.5	Health care assessment	5.3
23-2.6	Rationales for segregated housing	
23-2.7	Rationales for long-term segregated housing	
23-2.8	Segregated housing and mental health	
23-2.9	Procedures for placement and retention in long-term segregated housing	
<b>PART III: CONDITIONS OF CONFINEMENT</b>		
23-3.1	Physical plant and environmental conditions	6.13
23-3.2	Conditions for special types of prisoners	
23-3.3	Housing areas	6.13
23-3.4	Healthful food	6.13(c)(iii)
23-3.5	Provision of necessities	4.1(a), 6.13(c)
23-3.6	Recreation and out-of-cell time	6.13
23-3.7	Restrictions relating to programming and privileges	6.13
23-3.8	Segregated housing	6.13(d)
23-3.9	Conditions during lockdown	
<b>PART IV: RULES OF CONDUCT AND DISCIPLINE</b>		
23-4.1	Rules of conduct and informational handbook	3.1
23-4.2	Disciplinary hearing procedures	3.2
23-4.3	Disciplinary sanctions	
<b>PART V: PERSONAL SECURITY</b>		
23-5.1	Personal security and protection from harm	6.9
23-5.2	Prevention and investigation of violence	
23-5.3	Sexual abuse	
23-5.4	Self-harm and suicide prevention	
23-5.5	Protection of vulnerable prisoners	

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Section	Title	1981 analogue
23-5.6	Use of force	6.12
23-5.7	Use of deadly force	6.12
23-5.8	Use of chemical agents, electronic weaponry, and canines	
23-5.9	Use of restraint mechanisms and techniques	
<b>PART VI: HEALTH CARE</b>		
23-6.1	General principles governing health care	5.1
23-6.2	Response to prisoner requests for health care	5.2
23-6.3	Control and distribution of prescription drugs	5.6
23-6.4	Qualified health care staff	5.1
23-6.5	Continuity of care	
23-6.6	Adequate facilities, equipment, and resources	5.1
23-6.7	Quality improvement	
23-6.8	Health care records and confidentiality	5.4
23-6.9	Pregnant prisoners and new mothers	5.7
23-6.10	Impairment-related aids	
23-6.11	Services for prisoners with mental disabilities	7-10.2 (Mental Health)
23-6.12	Prisoners with chronic and communicable diseases	
23-6.13	Prisoners with gender identity disorder	
23-6.14	Voluntary and informed consent to treatment	5.5
23-6.15	Involuntary mental health treatment and transfer	7-10.5 to -10.9 (Mental Health)
<b>PART VII: PERSONAL DIGNITY</b>		
23-7.1	Respect for prisoners	6.9, 6.14
23-7.2	Treatment of prisoners with disabilities and other special needs	6.14
23-7.3	Religious freedom	6.5
23-7.4	Prisoner organizations	6.6
23-7.5	Communication and expression	6.7
23-7.6	Personal appearance	6.8
23-7.7	Records and confidentiality	6.11
23-7.8	Searches of facilities	6.10
23-7.9	Searches of prisoners' bodies	6.10
23-7.10	Cross-gender supervision	
23-7.11	Prisoners as subjects of behavioral or biomedical research	5.8
<b>PART VIII: REHABILITATION AND REINTEGRATION</b>		
23-8.1	Location of facilities	
23-8.2	Rehabilitative programs	4.3
23-8.3	Restorative justice	
23-8.4	Work programs	4.1(b), 4.2, 4.4 (1985), 4.5 (1985)

Section	Title	1981 analogue
23-8.5	Visiting	6.2, 6.3
23-8.6	Written communications	6.1
23-8.7	Access to telephones	
23-8.8	Fees and financial obligations	
23-8.9	Transition to the community	
<b>PART IX: GRIEVANCES AND ACCESS TO COURTS</b>		
23-9.1	Grievance procedures	7.1
23-9.2	Access to the judicial process	2.1
23-9.3	Judicial review of prisoner complaints	2.1
23-9.4	Access to legal and consular services	2.2
23-9.5	Access to legal materials and information	2.3
<b>PART X: ADMINISTRATION AND STAFFING</b>		
23-10.1	Professionalism	
23-10.2	Personnel policy and practice	
23-10.3	Training	
23-10.4	Accountability of staff	
23-10.5	Privately operated correctional facilities	
<b>PART XI: ACCOUNTABILITY AND OVERSIGHT</b>		
23-11.1	Internal accountability	6.4, 7.2, 7.3
23-11.2	External regulation and investigation	6.13, 7.3
23-11.3	External monitoring and inspection	
23-11.4	Legislative oversight and accountability	7.4
23-11.5	Media access to correctional facilities and prisoners	6.4



## REPORT

### I. Introduction

For decades, the ABA's commitment to improving the fairness, humanity, and effectiveness of American correctional practices has been vitally important to the progress made in corrections. This recommendation is for the House of Delegates to continue this tradition by approving a new edition of the *Criminal Justice Standards on the Treatment of Prisoners* to replace the Standards relating to the *Legal Status of Prisoners* approved by the House in 1981, which were supplemented by two additions in 1985, but have not since been amended.<sup>1</sup>

The most consequential factual change over the past decades has been the astronomical growth in incarceration in the United States. In 1981, 557,000 prisoners were held in American jails and prisons; that number has since skyrocketed to its current level of 2.4 million people on any given day—more than one of every hundred adults in America. Relevant law has also changed considerably, expanding the scope of legal protection for prisoners in some areas while contracting that protection in others. International human rights standards have likewise evolved substantially, and more uniformly in favor of prisoners' rights. New approaches in corrections have elicited new legal standards and rules; new approaches to a variety of legal questions have varied in their application to corrections; and the application of the Eighth Amendment, the “basic concept underlying [which] is nothing less than the dignity of man,” has continued to safeguard “the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958). As the need for regulation and reform of prisons and jails has increased with their population and experience with solutions has grown, much in the existing Standards has become outdated and many new issues are simply not addressed. The need for the proposed updating and reformulation is by this time both obvious and pressing.

In 2004, the Criminal Justice Standards Committee appointed a Task Force to propose revisions to the 1981 Standards. This Task Force, comprising many of the nation's correctional law experts, and assisted by many other experts, met in person seven times over two years. Throughout the process, it obtained the comments and participation of various organizational stakeholders—in particular, the American Correctional Association, the American Jail Association, the ACLU National Prison Project, and the U.S. Department of Justice. The members of the Task Force were unanimous in their approval of the 2007 draft. Prior to submission of the draft to the Standards Committee in the summer of 2007, substantial redrafting occurred in response to concerns expressed by several of the organizational liaisons.

The Standards Committee then reviewed and revised the proposed Standards in detail, meeting (like the Task Force) seven times over the course of two years, and getting further outside comments during the last round of editing from, in particular, the Department of Justice liaison. The Committee was unanimous in approving the draft, which was then sent to the Criminal

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<sup>1</sup> See also 1984 *Mental Health Standards*, Part X (“Mentally Ill and Mentally Retarded Prisoners”). In August 2003, Part VIII of the 1981 Standards, on Civil Disabilities of Convicted Persons, was superseded by the new *Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*.

Justice Council and simultaneously to over 40 outside organizations and over 20 ABA entities. Nearly all the comments received praised the overall product, although many had specific suggestions for improved language. The American Correctional Association decided to neither approve nor disapprove the proposed Standards, and the U.S. Department of Justice found that extensive DOJ clearance procedures precluded its taking a position on the Standards. Further changes responsive to the many comments that were received were made prior to a first Council reading in August 2009 and a second in November 2009. At the second reading, the Council, like the bodies before it, approved the draft without dissent, and now offers it as a recommendation to the House of Delegates.

## II. Overall Approach

Over the years of development of this recommendation, the Task Force on the Treatment of Prisoners, the Standards Committee, and the Criminal Justice Section Council took as their task Justice Anthony Kennedy's 2003 challenge to the ABA to address "the inadequacies—and the injustices—in our prison and correctional systems." The proposed Standards would apply to all prisoners confined in adult correctional and criminal detention facilities, regardless of age or immigration status, but do not seek to cover facilities dedicated entirely to either juvenile or immigration detention. While the 1981 Standards were an important starting point, the proposed Standards identify significant current problems that were not addressed by the 1981 Standards, such as long-term and extreme isolation of prisoners, crowding, and prisoners whose mental and physical health or other circumstances create a variety of special needs.

The history of the Bar's previous efforts in corrections suggests several guiding principles:

- a) the Bar cannot cede to corrections professionals the task of improving American conditions of confinement;
- b) the Bar's contribution to corrections therefore should take account of but not be bound by the views of corrections professionals; and
- c) the Bar's involvement in corrections aims to promote the fair and humane operation of jails and prisons, not merely to implement compliance with a constitutional floor.

These principles are exemplified by the numerous resolutions relating to corrections passed by the House of Delegates since 1981. Among its interventions, the House has:

- Supported the augmentation of prisoner employment opportunities (Report No. 114, July 1985; Report No. 120B, Aug. 1995; Report No. 101B, Feb. 2002);
- Urged "extreme caution" in private prison contracting, and made recommendations about the scope and structure of private prison contracts (Report No. 115B, Feb. 1990);
- Recommended consideration of prison impact statements prior to enactment of legislation that might increase incarceration (Report 115A, Feb. 1990; Report No. 107, Aug. 2002);
- Urged amelioration of jail crowding (Report No. 100B, Aug. 1990);
- Supported education, vocational and job training, mental health and substance abuse treatment, counseling, and other programs designed to reduce recidivism (Report No. 101C, Feb. 1992; Report No. 121D, Aug. 2004; Report No. 107, Aug. 2002);
- Urged robust application of correctional and accreditation standards, including those governing medical care (Report No. 101C, Aug. 1993; Report 113C, Aug. 1999);

- Endorsed the general principle that “prisoners retain the constitutional rights of free citizens” except “when restrictions are necessary to provide reasonable protection for the rights and physical safety of all members of the prison system and the general public” (Report No. 120B, Aug. 1995);
- Urged the availability of productive activities in prison (Report No. 120B, Aug. 1995);
- Supported compassionate release of terminally ill prisoners (Report No. 109, Feb. 1996);
- Urged expanded use of procedures for reduction or modification of sentence based on extraordinary and compelling circumstances arising after sentencing (Report No. 103B, Feb. 2003); see also Report No. 121C (Aug. 2004).
- Supported initiatives that seek to preserve and promote healthy relationships between children and their parents in prison (Report No. 104B, Aug. 1996);
- Supported classification, health, and human services programs that address the special needs of elderly prisoners (Report No. 102B, Feb. 2000);
- Urged corrections policymakers to take into account developmental differences between youths and adults; to house incarcerated youths separately from adults; and to provide incarcerated youths with programs that address their educational, treatment, health, mental, and vocational needs (Report No. 101D, Aug. 2002);
- Urged enactment of legislation promoting improved programs and treatment of prisoners with mental illness (Report 116, Feb. 2004);
- Recommended “development of reentry plans, procedures, and services to facilitate released inmates’ reintegration into the community” (Report No. 107, Aug. 2002; Report 121D Aug. 2004; see also Report No. 113C, Aug. 1999);
- Urged implementation of performance standards and information systems to increase the efficiency and cost-effectiveness of correctional practices (Report No. 107, Aug. 2002).
- Recommended that jurisdictions not deprive convicted persons of their right to vote “except during actual confinement.” (*Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, 19-2.6(a) (3d ed. 2003)).
- Recommended that prisoners be “effectively supervised in safe, secure environments, that correctional staff [be] properly trained and supervised; and that allegations of mistreatment [be] promptly investigated (Report 121D, Aug. 2004);
- Encouraged low telephone rates for prisoners (Report No. 115B, Aug. 2005);
- Urged the repeal of specified portions of the Prison Litigation Reform Act that restrict prisoners’ access to the judicial process (Report No. 102B, Feb. 2007);
- Urged the maintenance of prisoners’ Medicaid enrollment (Report 122, Aug. 2007); and
- Urged the establishment of independent public oversight entities to monitor and investigate corrections facilities (Report 104B, Aug. 2008).

The proposed Standards draw on these prior ABA policies and careful consideration of relevant correctional standards and policies, in particular the accreditation standards of the American Correctional Association and the National Commission on Correctional Health Care. Accordingly, the draft before the House is very largely consonant with such existing standards—as well as entirely consistent with current good professional practice.

Like the 1981 Standards, the proposed Standards are fairly lengthy and therefore this brief report can only address a few of the issues they raise. For any person interested, a great deal more

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background is available at <http://sites.google.com/site/treatmentofprisoner/>; including several memoranda addressing in more detail many of the choices embodied in the proposal.

The Standards have 11 parts. Part I is an overview, stating general principles that animate the overall proposal. Part II deals with intake and with classification, the process by which correctional authorities periodically assess prisoners' history, profile and any special needs (medical and mental health, substance abuse, special security risk, vulnerability to predation, etc.), and decide on appropriate levels of custody and supervision, including long-term isolation. Part III treats conditions of confinement more generally, addressing minimum environmental needs (e.g., ventilation and light), nutrition, sanitation, out-of-cell time and the like. Part IV is about prison rules and disciplinary consequences for their violation. Part V addresses personal security—protection of prisoners from harm, including physical and sexual assault and exploitation, suicide prevention, and uses of force and of physical restraints. Part VI deals with medical and mental health care, including quality of care, confidentiality, informed consent, and several special populations of prisoners (pregnant prisoners and new mothers, prisoners with hearing impairments, visual impairments, mental disabilities, communicable diseases, and gender identity disorders). It also covers due process protections for involuntary mental health treatment or transfers. Under the heading “personal dignity,” Part VII addresses religious and expressive freedom, treatment of prisoners with disabilities, searches, and prisoner participation in behavioral or biomedical research. Part VIII addresses issues such as work programs and visiting that are relevant to rehabilitation and the eventual reintegration of released prisoners. Part IX deals with prisoners' access to administrative grievance procedures and the courts. Part X includes standards relating to staffing—training, accountability, and private prisons. Finally, Part XI deals with both internal accountability and external oversight of prison operations.

It may be helpful to highlight the connection of the set of proposed Standards to the American Correctional Association's voluntary accreditation standards. We are not aware of even a single instance in which this proposal truly conflicts with the ACA's approach—that is, where compliance with both would be impossible. Several proposed Standards do, however, impose stricter limits on prison and jail operations than the ACA requires.<sup>2</sup> The number and scope of such divergences have been minimized, but the few that are proposed are important. It bears emphasizing in this regard that professional corrections standards are themselves thoroughly related to law and justice, not just to technocratic correctional expertise. The Bar should, accordingly, remain a full partner in our polity's conversation about prison conditions. On the merits, the Standards here proposed appropriately balance the institutional interests at stake.

At the same time, the proposed Standards are careful to avoid topics more appropriately left to operational experts rather than lawyers. The proposed Standards —like the Standards they would

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<sup>2</sup> For example, proposed Standard 23-3.6(b) would require all prisoners—whether in jail or prison, and whether in segregated or ordinary housing—to receive a daily opportunity to exercise for an hour in the open air, weather permitting. The ACA similarly requires accredited jails to provide prisoners at least one hour per day for physical exercise outside the cell, outdoors when weather permits. But for prisons, such a general requirement is only implicit in the ACA's accreditation standards; prisons are required to have sufficient outdoor and covered or enclosed exercise areas “to ensure that each inmate is offered at least one hour of access daily.” Moreover, the ACA's requirements for prisoners in segregated prison housing is that they should receive one hour per day out-of-cell exercise time only five days per week, not daily.

replace—are directed at establishing the conditions that should exist in confinement facilities. How these conditions come into being is left to the skill and resourcefulness of correctional administrators. There are no doctor-prisoner ratios here, no minimum library collections or the like. It is clear that officials who run jails and prisons are better equipped than lawyer-observers to operationalize legal standards. For example, adequate light is necessary for humane operation of a prison, as stated in both the 1981 Standards and our proposed Standards. But translation of this general command into a specific measure of “footcandles” in different settings is beyond the comparative advantage and appropriate role of the Bar.

In large part, the proposed Standards state the law, with sources from the Constitution, federal statutes and regulations, and court decisions developing each. They also rely on other legal sources, such as settlements negotiated between the U.S. Department of Justice and state and local governments, under the Civil Rights of Institutionalized Persons Act (CRIPA), as well as non-DOJ consent decrees, as models for implementation of legal norms.

In addition, however, there are occasions in which the litigation-developed constitutional minima for prisoners’ rights and their remediation omit critical issues that are of concern to criminal justice policymakers and correctional administrators. Two points are relevant here. First, courts grant correctional administrators a good deal of deference because of the principle of separation of powers. As the Supreme Court explained in *Lewis v. Casey*, 518 U.S. 343, 349 (1996):

It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.

These proposed Standards, which would offer advice not just to courts but to the political branches, are less deferential, because they have as their very purpose “to shape the institutions of government in such fashion as to comply with the laws and the Constitution.” Many of the proposals aim at what might be called the infrastructure of constitutional compliance. The Constitution does not, for example, guarantee prisoners trained correctional officers. But proposed Standard 23-10.3 addresses training because it is a necessary precondition for compliance with substantive constitutional requirements. The proposed Standards’ role is to provide guidance to judges, policy-makers, lawyers, and correctional administrators, and to help shape the just development of the law and operation of the criminal justice system. It is for this reason that, like the 1981 Standards, some of these proposed Standards are aspirational, yet within the bounds of lawful and feasible correctional practice. We firmly believe that each and every proposal reflects the best current thinking on the correctional practices necessary to protect prisoner’s rights and operate safe, humane, and effective prisons.

As with other ABA Standards, commentary to be published along with the Standards, if they are approved, will discuss relevant sources of law—case law, statute, regulation, treaty, and administrative action—and explain where the Standards propose either alterations in the law (for several statutes) or coverage of some issue not currently legally constrained. It will also include a full set of cross-references, to other ABA Standards and to relevant professional standards promulgated by such organizations as the American Correctional Association, the National Commission on Correctional Health Care, and the American Psychiatric Association.

Given space limitations, the remainder of this report discusses in more detail first the constitutional law governing jail and prison operations and then three issues that cut across numerous standards: classification, segregation, and re-entry.

### III. The Constitutional Law of Prisoners' Rights

Numerous federal statutes protect prisoners and govern prisons; these are listed and briefly described in the introductory memo posted at <http://sites.google.com/site/treatmentofprisoner/>. This section addresses some of the applicable constitutional law, which recognizes that “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.” *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974).

#### a. The Eighth Amendment

The most salient constitutional provision for correctional law is the Eighth Amendment, whose Cruel and Unusual Punishments Clause enforces “contemporary standards of decency.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The core value that underlies the Eighth Amendment is prisoners’ inalienable human dignity. See *Trop v. Dulles*, 356 U.S. 86, 100 (“The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.”); the U.S.’s signature on the International Covenant on Civil and Political Rights recognizes the same value.

The Eighth Amendment’s regulation of prison and jail conditions begins with the bedrock principle that corporal punishment is unconstitutional. See *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968) (Blackmun, J.), cited with approval in, e.g., *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). The Eighth Amendment forbids the “wanton infliction of pain” by excessive force. *Hudson v. McMillian*, 503 U.S. 1 (1992). See also *Hope v. Pelzer*, 536 U.S. 730, 738 (2002) (holding unconstitutional use of a hitching post to restrain a prisoner, because it was “punitive treatment [that] amounts to gratuitous infliction of ‘wanton and unnecessary’ pain that our precedent clearly prohibits”). Many of the provisions in the several use of force Standards are aimed to avoid summary corporal punishment.

But of course official force serves important interests in prison, and many such uses are appropriate. In *Whitley v. Albers*, 475 U.S. 312, 319 (1986), the Court distinguished between corporal punishment and “conduct that does not purport to be punishment at all”—that is, use of physical force for control and security purposes. In both *Whitley* and *Hudson v. McMillian*, 503 U.S. 1 (1992), the Court held that physical abuses against prisoners create constitutional liability only where the force is applied “maliciously and sadistically for the very purpose of causing harm,” rather than in a “good faith effort to maintain or restore discipline.” The Court held in *Hudson*, however, that no serious physical injury need result for constitutional liability.

The case law constrains correctional officials more in situations in which the penological purpose of a use of force or restraint is something other than a current security need—more general maintenance of order, for example. As the 11th Circuit held in *Sims v. Mashburn*, 25 F.3d 980, 984 n.9 (11th Cir. 1994), for example, in such situations the Constitution bans not just “malicious[] and sadistic[]” force, but “deliberate indifference.” Under *Farmer v. Brennan*, 511 U.S. 825, 837, 845 (1994), a case about the related issue of protection from harm, “deliberate

indifference” means recklessness with respect to “an excessive risk to inmate health or safety.” An example of force used not for security but for compliance might be use of pepper spray against a prisoner passively resisting following an order; if pepper spray is used notwithstanding that prisoner’s serious asthma, and harm results, it would be deliberately indifferent and therefore unconstitutional, even though not applied for the very purpose of causing pain.

Still, when force *is* used to cope with a security threat, constitutional case law focuses on the officer’s subjective thought process rather than the objective necessity of the force in question. These proposed Standards do not share this focus because they are concerned not with blame or liability but with sound correctional practice; their focus is on practices that promote the responsible and effective use of force that minimizes injury to both officers and prisoners.

Moving beyond force, many of these proposed Standards are designed to protect prisoners’ health and safety and to assure that their basic needs are met, and in this respect they more closely track what the Eighth Amendment requires. Prison officials may not “deprive inmates of the minimal civilized measure of life’s necessities.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Rather, the Court held in *Estelle v. Gamble*, 429 U.S. 97 (1976), that the constitutional ban on cruel and unusual punishment reached not only intentionally imposed sanctions but unintentional yet harmful conditions in prison. That essential rule has remained firmly in place, even growing more robust since the 1970s. *Estelle* held that the Cruel and Unusual Punishments Clause reaches prison officials’ failure to provide medical care; more recent cases have held that the clause reaches exposure to second-hand smoke, *Helling v. McKinney*, 509 U.S. 25 (1993); and failure to protect a transgender prisoner from rape by other prisoners, *Farmer v. Brennan*, 511 U.S. 825 (1994). Indeed, these last two cases make clear that the Eighth Amendment forbids not only imposition of serious harm but unreasonable *risks* of serious harm. Recklessness with respect to such risk is unconstitutional.

Finally, as developed in the following section, the proposed Standards devote a good deal of attention to segregated custody—isolation of prisoners, for whatever reason, in circumstances limiting their ability to interact with others. The constitutional standard governing conditions of confinement in isolation is the same as outside of isolation. The key is harm to the prisoner. While the Supreme Court has never assessed the constitutionality of conditions in long-term segregation (although, as discussed below, it has evaluated the process by which prisoners may be assigned to a “supermax” facility), lower federal courts have held segregated conditions unconstitutional based on absence of light or exercise, inadequate food, and so on. See, e.g., *Gillis v. Litscher*, 468 F.3d 488 (7th Cir. 2006) (reversing district court’s grant of summary judgment to defendants in supermax conditions of confinement case); *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004) (noting evidence that “the isolation and idleness of Death Row combined with the squalor, poor hygiene, temperature, and noise of extremely psychotic prisoners create an environment ‘toxic’ to the prisoners’ mental health.”). Isolation itself has been held unconstitutional for prisoners with serious mental illness, because of the probability of further psychological harm. See, e.g., *Madrid v. Gomez*, 889 F.Supp. 1146, 1265 (N.D. Cal. 1995), *mandamus denied*, 103 F.3d 828 (9th Cir. 1996). A number of cases involving the claim that isolation alone is unconstitutional, even for those who do not have a mental illness, have settled for relief that looks a good deal like what we propose in the relevant provisions.

## b. The Due Process Clause

A second key strand of the constitutional law of corrections involves due process—in particular, the process due for further deprivations of liberty within the prison or jail setting. The Supreme Court has insisted on various procedural protections to ensure accurate and fair decision-making in such contexts as prison discipline involving deprivation of good-time credits, *Wolff v. McDonnell*, 418 U.S. 539 (1974); transfer to a psychiatric institution, *Vitek v. Jones*, 445 U.S. 480 (1980); and forced administration of psychotropic medication, *Washington v. Harper*, 494 U.S. 210 (1990). Those precedents remain good law: contemporary case law is clear that substantial process continues to be due in proceedings to further deprive prisoners of their liberty. Where a liberty interest has been found, the question these cases answer is what process is due. Under the established general analysis, see *Mathews v. Eldridge*, 424 U.S. 319 (1976), the answer has varied based on the gravity of the liberty interest, the value of the process sought and the risk of erroneous deprivations if it is omitted, and the burden the process would impose. In the prison setting, this has meant that the law does not require the full panoply of due process protections familiar from criminal trials. But notice, an opportunity to be heard before a decision-maker who had no involvement in the relevant events, a limited right to assistance where it is needed, and a written statement of reasons for the decision have frequently been required.

The proposed Standards cover procedural protections in four contexts, for decisions relating to: classification (23-2.3); long-term administrative segregation (23-2.9); discipline (23-4.2); and involuntary mental health treatment and transfer (23-6.15). Note that some of the recommended procedural protections are not required by constitutional case law. For example, the Court held in *Wilkinson v. Austin*, 545 U.S. 209 (2005), that the indefinite transfer of prisoners to a “supermax” administrative segregation unit did not require that they have the right to present evidence and call witnesses, whereas the proposed Standard on such decisions does include those protections. Generally, the proposed Standards include procedural protections not guaranteed under the case law in situations in which such protections seem highly advisable to avoid erroneous and arbitrary decision-making.

In addition, it bears emphasis that the above refers to the process due for deprivations of protected liberty interests. The Supreme Court has always been careful, however, *not* to require due process protections around every important decision affecting prisoners’ lives. Decisions relating to classification and inter-prison transfers, for example, have been held not to deprive prisoners of a protected liberty interest, and therefore the Due Process Clause has not applied to them. See *Moody v. Daggett*, 429 U.S. 78 (1976) (classification, in dicta); *Meachum v. Fano*, 427 U.S. 215 (1976) (inter-prison transfers); *Olim v. Wakinekona*, 461 U.S. 238 (1983) (interstate prison transfers). The same rule applies to decisions relating to various privileges. See *Sandin v. Conner*, 515 U.S. 472 (1995) (noting this result for shock incarceration, tray lunches rather than box lunches, and in-cell television). Moreover, in *Sandin*, the Supreme Court introduced a significant restriction on prisoners’ rights in this area when it ruled that a liberty interest, and thus the need for due process, is not implicated in a prison disciplinary case unless the disciplinary penalty imposes an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484. Thus discipline that does not impact the length of a prisoners’ incarceration but only its conditions is often not regulated by the Due Process Clause; if similar conditions are sometimes imposed not as a matter of discipline but for

administrative reasons, they are not deemed “atypical.” Especially in states and settings in which prison life is particularly stark, this test shrinks the liberty interests protected.

To be sure, even after *Sandin*, the court-enforceable guarantee of due process continues to have significant application. Most recently, the Supreme Court held in the supermax case already mentioned, *Wilkinson v. Austin*, 545 U.S. 209 (2005), that transfer to an administrative segregation facility does indeed implicate a liberty interest of constitutional stature. In that case, the Court deemed Ohio’s practice sufficient: 48 hours written notice of the conduct triggering the classification review; an opportunity to contest placement in the facility both by appearing before the initial decision-maker and by submitting objections; review prior to transfer of the decision by a three-member committee by the warden and then by an agency-level “Bureau of Classification” and subsequent reviews by facility staff 30 days after the transfer and then annually. The proposed Standard on procedural protections relating to long-term segregation, in Standard 23-2.9, is consistent with the Ohio policy approved in *Wilkinson v. Austin*.

As a general matter, however, since *Sandin* many decisions about prisoners previously thought to require due process no longer do. The proposed Standards nonetheless would require procedural protections in some circumstances in which, under *Sandin*, none are constitutionally compelled. In particular, proposed Standard 23-4.2(d) would require a due process hearing prior to imposition of any penalty of disciplinary segregation. The recommendation that hearings be provided even when *Sandin* does not mandate them follows current corrections practice: correctional administrators, by and large, have not accepted the Supreme Court’s invitation to limit the provision of procedural protections against erroneous and unfair decision-making. Similarly, the proposed limited procedural protections for classification decisions—a written decision, the possibility of appeal, and periodic review (proposed Standard 23-2.3(b), (c), and (d)) are not compelled for compliance with the Due Process Clause, but are generally offered in prisons because of their value for institutional functioning.

### c. Other Constitutional Rights

The discussion of the Eighth Amendment and the Due Process Clause covers a good deal but by no means all the areas of constitutional doctrine that are relevant to these proposed Standards. Some others—free speech, freedom of religion, equal protection, etc.—are less unique to prisons and jails. A general point applies to them all. In most of these areas of law, the Court has held that a great deal of deference is due prison administrators. In *Turner v. Safley*, 482 U.S. 78, 89 (1987), the Court held that “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” Under the Eighth Amendment some rights—rights related to protection from harm, in particular—are *broader* in prison than outside. Under other constitutional provisions—most notably, the Equal Protection Clause—courts have decided that the scope of the right is the *same* in and out of prison; this rule applies to “right[s] that need [not] necessarily be compromised for the sake of proper prison administration.” See *Johnson v. California*, 543 U.S. 499, 500 (2005). But *Turner* makes it clear that the scope of many other rights shrinks behind the prison walls. Chief among these highly limited rights are privacy, free speech, and association.

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Even under *Turner*, however, prison regulations are unconstitutional if they reflect an “exaggerated response” even to real security concerns. *Turner* itself overturned a prison rule against prisoner marriages, on this basis. The approach of these proposed Standards is to offer a referent useful for those administrators seeking to avoid such an exaggerated response, and for courts seeking to assess correctional practices in application of this test.

## IV. Cross-cutting topics: Classification, Segregation, Reentry

The proposed Standards embody two overarching substantive commitments. The first is an insistence that prisons be safe, but that, simultaneously, restrictions upon prisoners should be justified rather than reflexive. Proposed Standard 1.1(e) insists that “[f]or a convicted prisoner, loss of liberty and separation from society should be the sole punishments imposed by imprisonment. For a prisoner not serving a sentence for a crime, the purpose of imprisonment should be to assure appearance of the prisoner at trial and to safeguard the public, not to punish.” Accordingly, “[r]estrictions placed on prisoners should be the necessary and proportionate to the legitimate objectives for which those restrictions are imposed.” 23-1.1(c). Many such restrictions are entirely legitimate, and even necessary, but others are unnecessary and even harmful.

The second is a thoroughgoing orientation towards re-entry, first mentioned in Proposed Standard 23-1.1(b):

Imprisonment should prepare prisoners to live law-abiding lives upon release. Correctional authorities should facilitate prisoners’ reintegration into free society by implementing appropriate conditions of confinement and by sustained planning for such reintegration.

The three topics discussed here—classification, segregation, and reentry—involve these two general commitments.

### a. Classification

The proposed Standards place a good deal of emphasis on classification—the process by which correctional agencies decide on appropriate housing, custody, and programming for prisoners. Classification and regular reclassification, using appropriate methods, are key to safe confinement and to rehabilitation, because appropriate individualized risk analysis puts dangerous prisoners in more confined settings but leaves less dangerous prisoners with more liberty, facilitating productive and rehabilitative activity. Proposed Standards 23-2.2 and 2.3 share with the 1981 version (23-3.4) the core principles of using and periodically reviewing the application of a classification regimen.

Case law establishes that the Due Process Clause has no application to classification procedures, because prisoners’ limited liberty interests are not affected by routine classification decisions:

[N]o due process protections [are] required upon the discretionary transfer of state prisoners to a substantially less agreeable prison, even where that transfer visit[s] a ‘grievous loss’ upon the inmate. The same is true of prisoner classification and eligibility for rehabilitative programs in the federal system.

*Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976). More than the 1981 Standard it would replace, proposed Standard 23-2.3 reflects that legal holding, as well as the fact that corrections practice does not generally provide due process in classification. Yet in light of the centrality of classification to the experience and safety of prisoners, 23-2.3 does require written decision-making and the opportunity for appeal of classification decisions.

More substantively, the proposed Standard would require use of an objective and validated classification instrument. A little explanation may be helpful. A recent discussion of this issue is included in the final report of the Commission on Safety and Abuse in America's Prisons:

Before 1980, most of the nation's prisons and jails used "subjective classification," which relies heavily on the judgment and hunches of line officers. Since then, every prison system has shifted, at least as a matter of policy, to "objective classification." These standardized and automated classification criteria "place greater emphasis on fairness, consistency, and openness in the decision-making process."

Numerous studies of both jails and prisons demonstrate that violent acts, escapes, and deaths by violence can all be significantly reduced by using a validated objective classification system. But currently, the full potential of this tool is not being realized. As James Austin, a leading researcher, reported in 2003: "Although prison classification and other risk assessment instruments are now common, there is a disturbing trend that suggests that many of these systems were implemented without first being properly designed and tested." In addition, many jails do not use objective classification at all: In eight of the 21 states surveyed in 2003, fewer than half of local jails reported using objective classification.<sup>3</sup>

JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, *CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS* 29 (Vera Institute of Justice 2006), available at <http://www.prisoncommission.org/>.

Validation and revalidation are population-specific processes that seek to ensure, both initially and over time, that classification systems continue to make "consistent and reliable custody decisions, use valid criteria for those decisions, systematically assess inmate program needs, and increase the safety and security of staff and inmates." *Prison Classification Systems: The Experience of Ten States and Model for Classification Reform* (January 2002). As described in the Department of Justice (National Institute of Corrections) publication, *Objective Prison Classification: A Guide for Correctional Administrators* (July 2004), available at [www.nicic.org](http://www.nicic.org): "[v]alidation studies track the misconduct of a sample of prisoners (e.g., an admission, release, or current population cohort) over a given period to determine whether the risk factors scored by the classification system are associated with prisoner misconduct. Statistical tests are used in completing the analysis of the risk factors."

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<sup>3</sup>Internal citations omitted; the sources quoted and cited are: JAMES AUSTIN, *FINDINGS IN PRISON CLASSIFICATION AND RISK ASSESSMENT* (National Institute of Corrections 2003), available at <http://www.nicic.org/Library/018888>; Connie Clem & Dave Sheanin, *Issues in Jail Operations*, in *PERSPECTIVES FROM STATE JAIL INSPECTION AGENCIES* (National Institute of Corrections, 2003), available at <http://www.nicic.org/Library/019259>; NATIONAL INSTITUTE OF CORRECTIONS, *JAIL CLASSIFICATION SYSTEM DEVELOPMENT: A REVIEW OF THE LITERATURE* (1992), available at <http://www.nicic.org/Library/010681>.

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Many of the proposed Standards can be safely and effectively implemented only if they are preceded by sound classification of the affected prisoners.

## **b. Segregation**

Eight proposed Standards deal with administrative and disciplinary isolation or segregation, including the long-term segregation custody in facilities or units often described as “supermax.” These proposed Standards have no predecessor in the 1981 Standards or in other existing ABA policy. Standard 23-2.6 sets out very broad substantive prerequisites for placing a prisoner in segregation even for a short time; 23-2.7 provides far narrower rationales acceptable for segregation for a longer period. 23-2.8 deals with the extremely important topic of mental health monitoring of prisoners in segregation; 23-6.11(c) and (d) forbid housing of prisoners with serious mental illness in anti-therapeutic environments and require development, instead, of high-security mental health housing. Standard 23-2.9 governs the process by which a decision is made to house a prisoner in long-term segregation; 23-3.7 and 23-3.8 limit the degree of sensory deprivation and isolation even in such a setting. Finally, Standard 23-3.9 deals with facility “lockdowns,” which can sometimes operate, *de facto*, as wholesale segregating reclassification.

Given the current prevalence of long-term segregation facilities, some background may be helpful. The 1981 Standards did not deal with such facilities because they did not exist when those Standards were passed. The forerunner of today’s “supermax” facilities was the federal maximum security prison at Alcatraz, but it had closed years before, in 1963. A high-security control unit at the U.S. Penitentiary in Marion, Illinois, opened in 1978, but the modern supermax prison was not born until USP Marion was locked-down permanently in 1983, after the murder of two correctional officers by prisoners on the same day. The federal Bureau of Prisons opened another such facility in Florence, Colorado, in 1994; by 1999, more than 30 States operated supermax prisons. Chase Riveland, *Supermax Prisons: Overview and General Considerations* 1 (NIC 1999), available at <http://www.nicic.org/pubs/1999/014937.pdf>. These freestanding facilities hold thousands of prisoners, and have also made more salient the issues raised by similar custody arrangements in units within general population facilities.

To understand life in long-term segregation, consider, for example, the Supreme Court’s description of life in the Ohio State Penitentiary, the supermax facility that was the subject of *Wilkinson v. Austin*, 545 U.S. 209, 214 (2005):

In the OSP almost every aspect of an inmate’s life is controlled and monitored. Inmates must remain in their cells, which measure 7 by 14 feet, for 23 hours per day. A light remains on in the cell at all times, though it is sometimes dimmed, and an inmate who attempts to shield the light to sleep is subject to further discipline. During the one hour per day that an inmate may leave his cell, access is limited to one of two indoor recreation cells.

Incarceration at OSP is synonymous with extreme isolation. In contrast to any other Ohio prison, including any segregation unit, OSP cells have solid metal doors with metal strips along their sides and bottoms which prevent conversation or communication with other inmates. All meals are taken alone in the inmate’s cell instead of in a common eating area. Opportunities for visitation are rare and in all events are conducted through glass walls. It is fair to say OSP inmates are

deprived of almost any environmental or sensory stimuli and of almost all human contact.

Some prisoners are sufficiently mentally resilient (and their stays in segregation sufficiently short) that supermax confinement does them no lasting harm; for others, the human cost can be devastating. Abundant research demonstrates that prisoners in segregated confinement often experience physical and mental deterioration. Indeed, even in 1890, the Supreme Court discussed some of the evidence relating to the penitentiary system of solitary confinement:

[E]xperience demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.

*In re Medley*, 134 U.S. 160, 168 (1890); see also *Chambers v. Florida*, 309 U.S. 227, 237-38 (1940) (referring to “solitary confinement” as one of the techniques of “physical and mental torture” governments have used to coerce confessions). The modern evidence is abundant. As a leading expert summarizes:

Solitary confinement—that is the confinement of a prisoner alone in a cell for all, or nearly all, of the day with minimal environmental stimulation and minimal opportunity for social interaction—can cause severe psychiatric harm. It has indeed long been known that severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning.

Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. LAW & POL’Y 325 (2006).

Some dangerous prisoners pose a threat to others unless they are physically separated. But such separation does not necessitate the social and sensory isolation that has become routine. Extreme isolation is not about physical protection of prisoners from each other. It is a method of deterrence and control—and as currently practiced it is a failure. The segregation units of American prisons are full not of Hannibal Lecters but of “the young, the pathetic, the mentally ill.” Rob Zaleski, *Supermax Doesn’t Reflect the Wisconsin that Walter Dickey Knows*, CAPITAL TIMES (Madison, Wis.), Aug. 27, 2001 (quoting Walter Dickey, former secretary of the Wisconsin Department of Corrections).

Long-term segregation units are extraordinarily expensive to build and operate. Too many prisoners are housed in them for too long, in conditions whose harshness stems more from criminal justice politics than from correctional necessity or even usefulness. Those prisoners experience extreme suffering within the units, and those who have serious mental illness frequently decompensate and become floridly psychotic. As one judge has explained, “[f]or these inmates, placing them in the SHU [Security Housing Unit] is the mental equivalent of putting an asthmatic in a place with little air to breathe.” *Madrid v. Gomez*, 889 F.Supp. 1146, 1265 (N.D. Cal. 1995), *mandamus denied*, 103 F.3d 828 (9th Cir. 1996). See also *Jones’El v. Berge*, 164 F.Supp.2d 1096 (W.D. Wis. 2001); *Disability Advocates v. New York State Office of Mental Health*, No. 1:02-cv-04002 (S.D.N.Y. Apr. 2007) (settlement agreement). Some prisoners who start off relatively psychologically healthy experience mental health damage, as well. Such

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conditions are inconsistent with the human dignity of prisoners, as well as frequently being counterproductive. It is for this reason that the recommended Standards propose several important reforms in this area of criminal justice policy:

- Provide sufficient process prior to placing or retaining a prisoner in segregation to be sure that it is warranted. (23-2.9)
- Limit the permissible reasons for segregation. Disciplinary segregation should generally be brief and should rarely exceed one year. Longer-term segregation should be imposed only if the prisoner poses a continuing and serious threat. Segregation for protective reasons should take place in the least restrictive setting possible. (23-2.6; 23-5.5)
- Decrease isolation within segregated settings. Even prisoners who cannot mix with others can be allowed in-cell programming, supervised (and physically isolated) out-of-cell exercise time, face-to-face interaction with staff, access to television or radio, phone calls, correspondence, and reading material. (23-3.7, 23-3.8)
- Decrease sensory deprivation within segregated settings. Limit the use of auditory isolation, deprivation of light and reasonable darkness, punitive diets, etc. (23-3.8)
- Allow prisoners to progress gradually towards more privileges and fewer restrictions, even if they continue to require physical separation. (23-2.9)
- Do not place prisoners with serious mental illness in what is an anti-therapeutic environment. Maintain appropriate secure mental health housing for them, instead. (23-2.8, 23-6.11)
- Carefully monitor prisoners in segregation for mental health deterioration, and deal with it appropriately if it occurs. (23-6.11)

While the ABA would be far from the first organization to offer proposals along these lines,<sup>4</sup> these Standards would be the first time the ABA has engaged the issue.

## c. Re-entry

In light of the massive numbers of prisoners and the correspondingly increased numbers of former prisoners, the proposed Standards urge that prison itself be oriented towards re-entry and reintegration of those leaving prison into non-prison communities. Current ABA policy on the point recommends “development of reentry plans, procedures, and services to facilitate released inmates’ reintegration into the community,” and rehabilitative programming “designed to reduce recidivism.” Report No. 107, Aug. 2002. For a summary of many recent governmental initiatives in this area, see, e.g., Re-Entry Policy Council, <http://www.reentrypolicy.org>.

The most relevant provisions, after an initial statement in Standard 23-1.1(b), are contained in Part VIII, which groups together Standards relating to “Rehabilitation and Reintegration”—including proposed Standards relating to the location of facilities, prisoner work programs, visiting, access to telephones, and preparation for release.

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<sup>4</sup> See, e.g., JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS 52-60 (Vera Institute of Justice 2006) (making similar recommendations and discussing other comparable proposals).

Many of the proposed provisions reiterate existing ABA policy—for example, proposed 23-8.1 emphasizes the importance of locating prison facilities to facilitate visiting and maintenance of community ties in anticipation of the prisoner’s re-entry. See Report 107, Aug. 2002, adopting “Blueprint for Cost-Effective Pretrial Detention, Sentencing, and Corrections Systems” (“the selection of the facilities to be closed should take into account the desirability of permitting appropriate visitation by family members, in order to facilitate inmates’ eventual reintegration into the community”). Proposed 23-8.9(h) urges states to protect continuity of medical care for those entering correctional facilities, so that applicable medical benefits become available immediately upon those prisoners’ release. This approach is endorsed by existing ABA policy, Report 122, Aug. 2007, as well as by the National Commission on Correctional Health Care. See NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES: A REPORT TO CONGRESS 62 (2002), available at [http://www.ncchc.org/stbr/Volume1/Health%20Status%20\(vol%201\).pdf](http://www.ncchc.org/stbr/Volume1/Health%20Status%20(vol%201).pdf). Likewise, 23-8.9(g), on early release mechanisms, accords with existing ABA policy. See Report No. 109, Feb. 1996.

In other components of this part, the proposed Standards add to prior ABA policy. For example, proposed Standard 23-8.5 supports efforts to maintain prisoners’ family and community ties by encouraging visitation. Two U.S. Supreme Court cases, *Block v. Rutherford*, 468 U.S. 576 (1984), and *Overton v. Bazzetta*, 539 U.S. 126 (2003), have severely cut back prisoners’ constitutional visitation rights and are at odds with the principles expressed in the 1981 Standards. The proposed Standards take the position that there are important public policy interests served by encouraging prisoners to stay in touch with the outside world, without regard to constitutional law. In support of this position is a growing body of social science research showing that retaining ties with family and community plays an important part in reducing recidivism and facilitating re-entry. Visiting rights are also substantially protected under international law. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 19 (“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”); U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 37 (“Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”).

Overall, the intent of these several provisions is to focus the attention of those who operate and oversee jails and prisons on the fact that nearly all of their prisoners will be released, and to encourage policies and procedures that maximize the ability of all prisoners to remain engaged with their families and to lead productive and healthy lives upon their return to the community.

Respectfully submitted,  
Charles J. Hynes  
Chair, Criminal Justice Section  
February 2010

## GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Charles Joseph Hynes, Section Chair

1. Summary of Recommendation(s).

The recommendation is to approve a new set of ABA Criminal Justice Standards on the *Treatment of Prisoners* to supplant the previous *Legal Status of Prisoners Standards* that were approved in 1981 and 1985. The recommendation would also supplant six Standards on prisoners with mental illness or mental retardation in the *ABA Criminal Justice Mental Health Standards* approved in 1984. The eleven Parts of the proposed Standards address: General Principles; Intake and Classification; Conditions of Confinement; Rules of Conduct and Discipline; Personal Security; Health Care; Personal Dignity; Rehabilitation and Reintegration; Grievances and Access to Courts; Administration and Staffing; and Accountability and Oversight.

2. Approval by Submitting Entity.

The proposed *Treatment of Prisoner Standards* were approved on November 7, 2009 at the second reading by the Criminal Justice Section Council.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

Since the late 1960's, the ABA has been adopting, updating, and adding to what was originally a 17-volume set of ABA Criminal Justice Standards. In February 1981, the House of Delegates approved a set of Standards on the *Legal Status of Prisoners (LSOP)*, and in July 1985 added two additional Standards to that set. In August 2003, Part VIII of those Standards addressing civil disabilities of convicted persons was superseded by a new set of *Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*. Although there have been significant changes in the correctional field since the adoption of the LSOP Standards and the ABA has addressed a number of these through separate House of Delegates resolutions (see 4, below), the outdated LSOP Standards are at present the only comprehensive source of ABA policy relating to correctional institutions and prisoners.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Since the adoption of the LSOP Standards, the ABA House of Delegates has approved many corrections and prisoner-related resolutions, most of which have been incorporated in substance in the proposed Standards. These include resolutions on: accreditation (AM93; AM99); compassionate release (AM96 & MY96); credit toward completion of sentence (AM04); efficiency and cost-effectiveness of correctional practices and programs (AM02); elderly offenders (MY00); jail overcrowding (MY90); limited restrictions on prisoners' constitutional rights (AM05); prisoners with mental illness

(MY04); oversight and monitoring (AM08); parents in custody (AM96); Prisoner Litigation Reform Act (MY07); prisoner education, training, treatment, and counseling (MY90; MY92; AM02; AM04); prison and jail impact statements (MY90); prisoner employment (AM85; AM95; MY02); prisoner reintegration and reentry (AM99; AM09); privatization (MY90); productive activities for prisoners (AM95); supervision of prisoners (AM04); telephone services (AM05); and voting rights of convicted but non-incarcerated persons (AM03). Prisoners with mental illness or mental retardation were addressed in the *ABA Criminal Justice Standards on Mental Health adopted in 1984*, and, as set forth in the “Further resolved” clause of the recommendation, some of these Standards will be supplanted by the recommendation’s adoption. Another Criminal Justice Section resolution before the House of Delegates at this meeting includes among its provisions several that are similar to, and consistent with, proposed Standards on facilitating contact and communication between parents in correctional custody and their children in the free community.

Adoption of the Standards would greatly increase the accessibility to the principles promoted in all of these individual resolutions, as well as put them into a comprehensive context that will be useful for years to come.

5. What urgency exists which requires action at this meeting of the House?  
The current LSOP Standards have grown out of date over the past two decades during which time the ABA’s ability to promote correctional reform has been limited. There is now a burgeoning effort in many states and at the national level (see 6, below) to address myriad issues raised by the unprecedented number of prisoners in the nation’s correctional institutions, and it is extremely important that these Standards – developed and extensively reviewed over a four-year period – be approved at the earliest possible date so that the ABA can play an influential role in that effort. One issue addressed in the Standards that is of particular urgency relates to sexual abuse in prisons. In June 2009, the federal Prison Rape Elimination Act (PREA) Commission issued proposed national standards to prevent, detect, respond to and monitor sexual abuse of incarcerated persons, and the U.S. Attorney General is to promulgate final standards no later than June 22, 2010. Approval of the resolution would enable the Association to advise the Attorney General of its own well-considered positions on this subject.
  
6. Status of Legislation. (If applicable.)  
On March 26, 2009, Sen. Jim Webb introduced S.714. With 35 co-sponsors, it is currently before the Senate Judiciary Committee, with hearings scheduled for November. The legislation would establish a National Criminal Justice Commission Act of 2009 to undertake a comprehensive review of the criminal justice system by: (1) reviewing all areas of federal and state criminal justice costs, practices, and policies; (2) making specified findings relating to incarceration, prison administration, the impact of gang activity, drug policy, mental illness among prisoners and the role of the military in crime prevention; (3) making recommendations for changes in policies and laws to address findings; (4) consulting with government and nongovernmental leaders, including state and local law enforcement officials; and (5) submitting a final report to Congress and the President and make such report public. A resolution urging a national study of the state

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of U.S. criminal justice approved by the ABA in August 2009 gives the ABA authority to lobby in favor of S.714 or similar legislation. Approval of the proposed Standards would provide the ABA the opportunity to provide the Commission guidance on many of the specific areas it is expected to examine.

In addition, there are expectations that legislation will be re-introduced into the new Congress to amend the Prisoner Rights Litigation Act (PLRA) inter alia to delete the requirement of physical injury in order for prisoners to recover for mental or emotional injuries caused by cruel and unusual punishment or other illegal conduct and possibly to make other changes recommended by the proposed Standards. Although the ABA approved a resolution supporting such a deletion and other PLRA changes in February 2007, reaffirmation of its position on these issues in the Standards will give it continuing impetus.

Finally, approval of the resolution would allow the ABA to weigh in on likely federal legislation regarding prisoners' mental health.

7. Cost to the Association. (Both direct and indirect costs.)  
None except those relating to ABA testimony on related matters.
8. Disclosure of Interest. (If applicable.)  
No known conflict of interest.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the February 2010 House of Delegates agenda it is being circulated to the following:

Judicial Division  
Litigation Section  
Individual Rights and Responsibilities Section  
Health Law Section  
Family Law Section  
Standing Committee on Legal Aid & Indigent Defendants  
Coalition for Justice  
Death Penalty Representation Project  
Council on Mental and Physical Disability Law  
Council on Ethnic and Racial Justice  
Commission on Sexual Orientation and Gender Identity  
Commission on Youth at Risk  
Government Lawyers Division  
General Practice, Solo, and Small Firm Division  
Section of State and Local Government Law

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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## EXECUTIVE SUMMARY

### **A. Summary of Recommendation.**

The recommendation is to approve a new set of *ABA Criminal Justice Standards on the Treatment of Prisoners* to supplant the previous *ABA Criminal Justice Standards on the Legal Status of Prisoners* that were approved in 1981 and 1985. (In August 2003, Part VIII of those Standards addressing civil disabilities of convicted persons was superseded by a new set of *ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*.) Further, the recommendation would supplant six Standards on prisoners with mental illness or mental retardation in the *ABA Criminal Justice Standards on Mental Health* approved in 1984. The proposed Standards consist of eleven Parts: General Principles; Intake and Classification; Conditions of Confinement; Rules of Conduct and Discipline; Personal Security; Health Care; Personal Dignity; Rehabilitation and Reintegration; Grievances and Access to Courts; Administration and Staffing; and Accountability and Oversight.

### **B. Issue Recommendation Addresses.**

The recommendation addresses myriad issues related to corrections and the treatment of prisoners under the various Parts listed in A, above.

### **C. How Proposed Policy Will Address the Issue.**

The proposed policy will provide legislators, correctional administrators, correctional staff, defense attorneys, courts, health care providers, prisoner rights advocates, prisoners and others detailed and well-considered guidance in handling a wide variety of corrections-related issues.

### **D. Minority Views or Opposition.**

The proposed Standards were approved without opposition by the members of the drafting Task Force, the Criminal Justice Standards Committee, and the Criminal Justice Section Council. At all stages, advice was sought from interested individuals and organizations on particular issues, and prior to the first and second readings by the Section Council, the entire draft Standards were widely circulated to potentially-interested ABA entities and non-ABA organizations and individuals. The comments in response almost unanimously praised the product, even when specific suggestions to improve it were made. (Such suggestions were all considered and many incorporated.) The American Correctional Association (which sent representatives to most Task Force meetings) advised that it would neither approve nor disapprove the proposed Standards. The U.S. Department of Justice (which sent representatives to most Task Force, Standards Committee and Council meetings where the proposed Standards were discussed) found that extensive government clearance procedures precluded its taking a position on the Standards.